93-200 (1)

No.

Supreme Court, U.S.
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OFFICE OF THE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

EDWARD D. COWHIG,

Petitioner, Pro Se

v.

MICHAEL P. W. STONE,

Secretary of the United States Army, Et Al

Respondents/Defendants

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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529 pp 8 $10

QUESTIONS PRESENTED

1. Is the force of Statutory Law (10 U.S.C. 3785, now 1185) governing Regular Army officers in the case of separation or elimination from such service as in this case at bar to be upheld and controlling in the presence of a possibly conflicting article in the Code of Federal Regulations [32 C.F.R. 65.4(b)(ii)] granting ecclesiastical endorsing agencies authority to be able to withdraw an ecclesiastical endorsement, while at the same time [32 C.F.R. 65.4(b)(v)] states that to be considered for D.O.D. recognition each religious faith group shall; (v) abide by the applicable regulations and policies of the Department of Defense?

2. Is not the failure to abide by the applicable regulations and policies of the Department of Defense, statutory law and Army regulations on the part of the Chief of Chaplains' office in 1961 which would have provided this plaintiff, then a Regular Army officer, with at least an opportunity to face his accusers, at least some semblance of due process at that time, and in addition to the subsequent loss, destruction, suppression of the essential accusatory document indicative of recklessness, bad faith and an abdication of duty?

3. Are not the ex parte communications between the Chief of Chaplains' office and officials of the Military Ordinariate (now the Archdiocese for Military Services, U.S.A.) in 1961

indicative and support the charge of collusion and recklessness, violative of this petitioner's constitutional and statutory rights?

4. Is not the present and long-standing absence to 1993 of the original fundamental accusatory document of 1961 and the supposed author's written denial of such authorship along with all lower administrative agencies and judicial tribunals' failure to address the basic issue of authenticity thereof when it was challenged and the presence of fraud, concealment thereof in a pattern of obstruction and evasion, indicative of bad faith, recklessness, and violative of constitutional rights of freedom of exercise of religion, due process, the right to be free from arbitrary seizure of property and liberty, as well as the

denial of "equal protection under the laws?"

5. Do not the Federal Rules of Evidence require the original of a document (1002), certainly when there is a question as to authenticity thereof (1003) and in the present circumstances where a primary defendant denies legal responsibility for custody and attempts to shift such to another party when put on notice (1004)?

6. Does not the loss, suppression or destruction of a document addressed to the Chief of Chaplains, U.S. Army, hence official, preclude the admissibility of a duplicate and indicate bad faith in the present case, especially when the notes of Committee of the Judiciary, House Report No. 93-650, in approving Rule 1004(1) in the form submitted to Congress asserted;

"However the committee intends that loss or destruction of an original by another person at the instigation of the proponent should be considered as tantamount to loss or destruction in bad faith by the proponent himself?"

7. Is not the collusion between a governmental enterprise and an ecclesiastical enterprise and the concomitant exclusion of this petitioner, as a charged party, to essential accusatory documents accompanied by intimidation and threat, an obstruction of justice, a deprivation of civil rights under color of law, a violation of constitutional and statutory rights, especially as and when this petitioner was performing his Regular Army duty in a foreign country under hazardous conditions, in an exemplary manner, and

constrained by top-secret military classifications? Is this fair?

8. Can the statute of limitations hold in the face of fraud, concealed fraud and the ongoing attempt to obstruct justice by foisting custodial responsibility for essential evidence to another party while that other party refuses to deny responsibility until 1988, well within the four year limitations period for RICO? Can the absence of reasonable diligence be maintained in such a situation?

9. Is it fair to hold res judicata not only in the presence of fraud, but also the presence of false certification as in the history of this present case, while the delayed brief of this petitioner is declared "moot" and no consideration is given to the obstruction tactics of the

government in withholding essential evidence thereby denying this petitioner the opportunity to face his accusers and defend himself?

10. Cannot the actions, behavior and conduct of military and medical personnel in regard to this petitioner, some of whom challenged his very vocation as merely self interest, especially in 1961 while he was in a very critical situation in southeast Asia, be regarded as an infringement of conscience and violative of the First Amendment's guarantee of the "free exercise" of religion "especially when this petitioner, with "Top Secret" information unknown to medical people and supervisory chaplains was operating in accord with the Code of Federal Regulations (C.F.R.), Department of the Army (D.O.D.) 510.1 which state in regard

to **private ministrations and ordinances** "Chaplains will administer or arrange for rites and sacraments for military personnel and civilians under military jurisdiction according to the respective beliefs and conscientious practice of all concerned (RS 1125; 10 U.S.C 238)(16 FR 12931, Dec. 7, 1951)?

11. Does the history of this case and the behavior of the courts below warrant a relief from judgment or order under Rule 60(b) when as the Rule states: "On motion and upon such terms as are just, the court may relieve a party...from a final judgment order or proceeding for the following reasons: (3) fraud; misrepresentation, or other misconduct of an adverse party; (6) any other reason justifying relief from the operation of the judgment?"

12. The respective beliefs and conscientious practice of the Catholic Church obliges its priests by pastoral theology and Canon Law to be highly aware of the "signs of the times" and more than ordinarily involved in the sacraments of Confession (Pennance, Reconciliation) and the last rites when its people, in this case the "troops," are "in periculo mortis?" Was not this the situation and set of circumstances which prevailed in Southeast Asia in 1961, as this petitioner's parachute unit was alerted twice to jump into Laos?

x

OTHER PARTIES

Chief of Chaplains; Surgeon General; Chief, Legislative Liaison Office; ABCMR; all of U.S. Army; the Archdiocese for Military Services, U.S.A.; Respondents.

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STATEMENT OF THIS CASE, ITS LONG-TORTURED HISTORY AND THE REASONS FOR REVIEW, DECISION OR REMAND

I apologize in the very beginning that this petition is not structured as a professional lawyer would do, but the facts and the law, ignored so far by so many should become more than clear in the telling, even though the "facts" are not usually considered by this Supreme Court. This case cries out for an integrated holistic hearing, for it is greater than the sum of its parts. All the items I cite in this brief and appendix have been introduced at one time or another in the record in the courts below, some repeatedly in the course of this long, long litigation. For the sake of conciseness and brevity, I will refer to the Appendix herein presented as the

complete record below consists literally of thousands of these pages. This should render it more readable, convenient to the court, and in the interest of justice.

The core of this case is that to date fraud has been not only allowed to have its way but has been concealed and covered up in an obstruction of justice fashion by attempting to foist legal custody for a document which was and is the proximate cause of this dispute involving fundamental rights of "due process" and the "free exercise" clause.

Justice Marshall stated "it is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, Kranch, 137, 177, 178.

"Without judicial enforcement, written constitutional declarations of civil liberties are apt to be mere

admonitions. Absent on institutional framework for their vindication they will have no greater force than the parson's injunction. ...But our tradition has always emphasized the role of the courts in preserving fundamental rights." (Judge Charles E. Wyzanski, Jr.- Footnote below.)

This petitioner has been a parson both as a Regular Army officer and as a civilian for 48 years, eleven as a parachuting parson. He now cries out to this Supreme Court for justice and redress as his reputation, a "liberty interest," is at stake.

From the same source cited below, Judge Learned Hand, pp. 44,45, said: "The day is gone when this court uses the Due

Footnote:

An introduction to Judge Learned Hand at the Oliver Wendell Holmes lectures, 1958, in a book titled The Bill of Rights, originally published by Harvard University Press, Published in 1986 by Atheneum, NY)

Process Clause of the Fourteenth Amendment to strike down state laws regulatory of business.... It remained true that procedurally the owner of property still had the protection of adequate notice and an opportunity to present his own evidence and to be presented with his adversary's; and the same is true of less tangible interests (my Regular Army Commission); but for these there was a background of precedent which has always been recognized as interpretative."

He also asserted: "Moreover, it has now become apparently accepted doctrine that the 'Due Process Clause' in the Fourteenth Amendment covers the prohibitions of the First." (p. 50 IDEM)

This is the fourth time I, a non lawyer, have petitioned pro se for a writ of certiorari to this Supreme Court in one or another aspect of this constitutional

and long-standing legal situation (1983, 1989, 1992, AND NOW). In terms of the legal system in general and the laws regulating religion in particular, Justice Holmes' statement has great importance: "A page of history is worth a volume of logic." I humbly petition this Supreme Court to consider the long history of this particular case, and the lawlessness, oversight and recklessness, if not malice and bad faith that has accompanied it from the very beginning in 1961 and has gone unrecognized by all. This contempt (of Congress too), arrogance and ignorance is still present in 1993, despite the persistent, most diligent efforts of this petitioner to seek the truth from both church and state and while being at the same time thwarted by unconstitutional procedures, namely, the continual denial of "due process" and the violations of the

"free exercise of religion" clause, accompanied by the fraudulent concealment of evidence and also hindered by the requirements of "top secret" military security classifications. Even recently discovered, relevant evidence of 1991 has been distorted and misinterpreted. The First Circuit in denying the Rule 60 Motion at issue here has stated it to be "non relevant," "could have been discovered earlier," and not conducive "to a reversal." But this petitioner insists that it is absolutely relevant to the charges and allegations, could not have been reasonably discovered and accepted as such before this time, and if properly read and interpreted would have then and should now produce a reversal. This is the core of this particular petition for certiorari but since it involves "due process" and "freedom of religion" it

demands "strict scrutiny" in a holistic manner, which to date has been sadly lacking.

The administrative and judicial actions heretofore made by this petitioner have consistently been blocked by a denial of access (1961-1993) to the original document asserting false allegations, which constitutes the fundamental indictment against me. Even the authenticity of this putative official original document, now missing from government files, has never been established by any authority, civil or religious, administratively or judicially, despite much dispute about it and its contents and the fact that the putative author has denied in writing that he is the author (App. p. 226).

Yet, the contents therein have been utilized to my further injury by agents of

both the government and my church many times despite the fact that there is no record in government files of this document. The Army Board for the Correction of Military Records (ABCMR) has stated in 1980 that it is the responsibility of my Church to establish or prove the authenticity of this document and only them (App. p. 387). Ridiculous!

On 8 May 1980, the Executive Secretary of the ABCMR stated: "The letter is in the church files and the authenticity can be determined only (emphasis supplied) by the church officials." (App. p. 387) This was in a letter to Senator Paul Tsongas, who had asked, "is the letter authentic?" But an evasive reply was the result. A similar response to Congressman Gerry E. Studds from the ABCMR Executive Secretary was given when the latter stated in regard to

this document, "...which is properly in the files of the Military Ordinariate in New York City." (25 September 1980) (App. p. 423, 424) The same response was given to Congressman J. Joseph Moakley (29 September 1982) (App. p. 199-201, at 200). Likewise, the response to Senator Edward Kennedy from the Executive Secretary of the ABCMR 19 June 1984 stated that the Board was "unable to ascertain why the original letter/document from Lieutenant General Paul W. Caraway is not currently in military files. However, it would appear that the original letter/document is or was in the hands of your Military Ordinariate in New York." (App. p. 245-248 at 247)

On the same date, 19 June 1984, in a letter addressed to this petitioner from the Executive Secretary of the ABCMR, he stated, "Pursuant to your request, please

find enclosed a complete copy of the entire file maintained by the Army Board for Correction of Military Records concerning the consideration of your case." (App. p. 245-248) But there was no original document of Lt. Gen. Paul W. Caraway dated 11 October 1961 therein, which the government itself previously termed the "proximate reason" for my separation from Regular Army status. The copy from church files, addressed to the Chief of Chaplains, was submitted by this petitioner to the ABCMR hearing in 1983 (App. p. 361-365).

Previously on 2 March 1978, before I received a copy of this nefarious document, Lt. Col. Charles L. Moore, U.S.A., Deputy, Congressional Correspondence Agency in response to a letter of inquiry of Speaker of the House Thomas P. O'Neill stated, "...examination

of Reverend Cowhig's official army military record fails to disclose any correspondence from Lieutenant General Paul Caraway to officials in the Department of the Army or to Cardinal Spellman." (App. p. 385) To this pro se petitioner, not a lawyer, this dilemma is obviously nonsense. It is supposed to be and has been considered by the ABCMR an official document to the Chief of Chaplains, U.S. Army, though the Congressional Liaison office in 1964 erroneously stated in a letter to the Speaker of the House, John W. McCormack, that it was a "report... to Cardinal Spellman."(App. p. 209-214 at 210) This was a gross misrepresentation with serious consequences, as I was refused access there to church files until 1980, while the Speaker considered it only as a church affair, apparently.

Also in 1964, I personally met Cardinal Spellman who after review of church files denied me permission to reenter the army. Of course, a copy of the spurious Caraway letter was in the church's files, most prejudicial and harmful. Again in 1966, I was given permission by the church to reenter the service, but this was later withdrawn as they stated it to Cardinal Cushing, "It is our understanding that Father Cowhig cannot receive a security clearance from the F.B.I." (App. p. 379) The poison of this "virus", the presence of a putative document seems again to have contaminated matters much worse that a computer "virus." F.B.I. -- nothing! More harm!

I was denied access to this 1961 document by both church and state for many years until I finally received a copy from church files in August 1980, which clearly

indicates the addressee, to have been the Chief of Chaplains, U.S. Army (App. at 361). Previously in 1974, the Army Board for Correction of Military Records (ABCMR) had established and determined that my forced resignation was involuntary under 10 U.S.C. 3785 (App. 427). Further multiple efforts before that Board were frustrated in subsequent years (1974-1980) apparently due to partial extracts from the basic spurious document sent in 1962 to my local religious superior, Cardinal Cushing from the Military Ordinariate (now termed the Archdiocese for Military Services, U.S.A.) causing further injury, which extracts I supplied to the Board (App. p. 366-372). At no time was I given the complete, full, copy of that spurious document as I have said until 1980 (August). I was deliberately kept in the dark! There was not even a semblance

of "due process" in 1961. There was no show cause hearing, no opportunity for rebuttal! I could not face my accusers! Also during this time, I was muted, in effect silenced, by my possession of "top secret" information on a "need to know" basis, particularly in regard to civilian religious authorities. (App. p. 249)

"...in the absence of explicit authorizatrion from either the President or Congress the respondents were not empowered to deprive the petitioner of his job in a preceding in which he was not afforded the safeguards of confrontation and cross examination." (Greene v. U.S. 376 U.S. 149, at 155.)

I petitioned the Court of Claims in 1980 (427-80C) for redress, but was denied due to a ruling on a six-year statute of limitations, 27 February 1981 (Motion to revoke denied 3 April 1981). However, in

that action which as Judge Nichols stated: "We need not address the merits...," (App. p. 37-39) the government certified with seal my Official Military Personnel File (OMPF) as "true and exact" on 11 October 1980 (App. p. 421-422) when it was not, as there was no document purportedly authored by Lt. Gen. Paul W. Caraway therein. It was not part of the record. Acting pro se, I was unable to respond in this Court of Claims action because of poor legal advice concerning the time required to respond. In fact, my response when sent and the order of the court passed each other in the mail. Consequently, my reply brief was declared "moot" and returned to me. However, in that order, Judge Nichols stated, "He was discharged from the Army Chaplain Corps January 22, 1962, following his voluntary resignation."(App. p. 38)

Certainly a prejudicial error with harmful results.

This judicial statement was just not true. My discharge had been declared involuntary under Title 10 U.S.C. 3785 in 1974 by the ABCMR. This prejudicial judicial error has perdured and has been the source of much judicial error and gross misinterpretation ever since. Regretfully, this Court of Claims decision has been the basis for the invocation of "res judicata" over the years. This seems pretty flimsy to me, not to say unjustified, especially when corruption upon this Court of Claims was practiced by the government by false certification of official records (App. p. 421-422). Or the other side of that coin according to Federal Rules of Civil Procedure, 44(b) (Endnote 1- App. p. 1) There is no record! On either side of the coin, the government

is and has been at fault for a long, long time. I was a Regular Army officer covered by Title 10 U.S.C. 3785, now 1185) (Endnote 2-App. p. 1-2).

None of these lawful rights were permitted and none of the procedures followed. The church's responsibility is covered by the Code of Federal Regulations [32 C.F.R.64.4(b)(v)(Endnote 3-App.p.2).

Surely the regulations and policies of the DOD should be in accord with statutory law and the constitution. But neither the Constitution nor statute, nor Federal Code, were abided by church authorities, deceived as they were by false reports.

32 C.F.R. 64.4(b)(ii) states, "...Each religious faith group shall; (ii) Be able to exercise ecclesiastical authority to grant or withdraw ecclesiastical endorsements." (App. p.

413-414) But how can a faith group properly exercise its authority if that endorsing power is itself deceived and no opportunity to present the true facts is available, or is not offered, in effect denied? The solution of this puzzle has been constantly ignored or overlooked by all agencies and courts so far, and so is properly presented to this Supreme Court for a solution by the exercise of its extraordinary powers.

On 11 July 1979, retired Gen. Caraway had handwritten and signed a letter to this petitioner stating: "Sir, I am satisfied that I did not prepare a letter concerning you. Further, in as far as I can discover, no letter concerning you was prepared by any member of my staff or by any employee in my headquarters, with or without my consent." (App. p. 226)

Yet, an unauthenticated, false, spurious document which , as the government has asserted was the "proximate reason" for this petitioner's separation from Regular Army status was bouncing around between church and state, and the contents partially reported to my local religious superior here in Boston (App. p. 366-372). It was a real "shell game." Where is it? I don't have it! Look, he has it! No! I don't have it! Can this procedure be called fair, while I was denied access and still am?

(I filed a complaint (81-1616C) 25 June 1981 in the District Court of Massachusetts before Judge A. Caffrey which was denied on the grounds of res judicata 31 March 1982. In his written opinion, this judge three different times asserted, "all the evidence" had been previously considered. That is

predjudicial. He also stated, "The Board considered the entire administrative record (App. p. 44-53 at 47). This just was not true then nor is it now in 1993. More and more judicial and prejudicial error!

The United States Court of Appeals (1st Circuit)(82-1352) (App. p. 60-71) affirmed the District Court 22 November 1982 asserting that the government had been prejudiced due to failing memories, but memories (App. p. 67) are certainly not critical in this case involving much documentary evidence. Papers and documents do not forget! They do not bleed! That Appeals Court stated, "This (prejudice) is especially important in this case in which Father Cowhig places much of his reliance to a challenge to the authenticity of a letter from a high ranking Army officer shortly prior to the

plaintiff's discharge, and also asserts that the statements in that letter were factually false." (App. p.67-68) Also, "plaintiff's course in pursuing relief from other tribunals, before he sued in the district court, does not show that his delay in filing suit below was a diligent or reasonable postponement." (App. p. 66-67) (Please remember that this was in 1982. Yet,the same rationale (lack of diligence) was used by the same Court of Appeals in 1992 to maintain and hold the statute of limitations as a bar.(App.p. 188) The challenge as to authenticity was raised, introduced, but left unresolved.)

Yet, neither the truth nor the authenticity of the basic, fundamental document containing false allegations were addressed by the judges despite Lt. Gen. P. W. Caraway's hand written denial in 1979 of the putative 1961 document's

authorship (App. p. 196), which denial I presented to the court. How can limitations or res judicata hold in the face of concealed fraud?

My Official Military Personnel File (OMPF) certified under seal as "true and exact" by the Department of the Army both by the Judge Advocate Branch and the Assistant Secretary of the Army in 1980 (App. p. 421-422) before the Court of Claims is not true and exact, or is it? If it is "true and exact" having no document of Lt. Gen. Caraway therein, what is the source of the church's copy? Another mystery! Unsolved!

This same certified record (OMPF) was used by the Army Board for the Correction of Military Records in its hearings of September 1983 as Exhibit "B" (App. p. 421-422) and as evidence considered, in addition to the church copy supplied by

this petitioner (APp. p. 361-365). Two sets of records! Two account books! The original was and is still missing in 1993.

A "de novo" hearing was held before the Army Board for the Correction of Military Records (ABCMR) in September of 1983 (App. p.72-94) The majority of this civilian board found in my favor, while the minority of two dissented.

The majority in its board conclusions, No. 5 among others, stated, "That although a conspiracy against the applicant was not conclusively proved at the hearings, sufficient evidence was addressed to create the appearance of such a conspiracy, and that conspiracy ultimately led to the ill-advised, and literally forced and truly involuntary resignation of the applicant from the service." (App. at 81)

Also No. 7 of the majority's conclusions is interesting, "that in view of the foregoing findings and conclusions,the Department's acceptance of the applicant's resignation, without affording him proper treatment and the opportunity to be rehabilitated, has deprived him of promotion to the grade of major and twenty-year retirement benefits and therefore is unjust." (App. p. 81-82)

The Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs), Mr. William D. Clark, upheld and concurred with the minority 29 March 1984 and denied all relief, one day after receiving the findings and conclusions (App. p. 90-94). However, during this hearing, the contents of this disputed document, from the copy thereof, the allegations of unsatisfactory performance of duties both military and

religious, were utilized. Both the probity and the competence of independent medical testimony were disregarded, if not impugned by the minority. The two dissenters were in gross error in their conclusion that there was incongruity between my testimony at the 1974 ABCMR hearing and that presented in 1983, implying mendacity (App. p. 87-88 par f).

The Assistant Secretary of the Army, Mr. William Clark, who made the ultimate decision, endorsed the minority opinion and stated in part, "...I find no conspiracy...;" (App. at 92) "The applicant's resignation was tendered as a result of the edict (emphasis supplied) of the Military Ordinariate of the Catholic Church which stated that he either resign from the Army or lose his ecclesiastical endorsement." (Is that not a threat? A real Hobson's choice!)(On a disposition

form in the Chief of Chaplains office on 24 November 1961, Chaplain [Col.] Bernard J. Fenton, under remarks thereon stated, "The ecclesiastical endorsing agency concerned will remove Chaplain Cowhig's ecclesiastical endorsement if his resignation is not accepted.) (Last folded item in Appendix) (How much pressure can they put on a guy?) Clark continued, "That edict was based solely on his excessive abuse of alcohol, which was affecting his performance of duty as an Army Chaplain and sullying his reputation as a chaplain and as a priest." (App. p. 93) This statement besides being presumptuous is false as even a cursory reading of the testimony, especially of my commander and executive officer at the hearing in 1983 would make manifest. In fact, the Army by its own criteria rated me in the top 5 percent worldwide.

Affecting his performance of duty? Sullying his reputation? Nonsense!! In fact and reality it was the allegations of non-performance of religious duties as contained in the 1961 so-called Caraway document that motivated church authorities to act as they did (App. p. 243).

Regarding performance of duty, a few pages (240-244) of my airborne commander's testimony (231-273) at the 1983 ABCMR hearing are listed in the Endnote Section of the Appendix (Endnote 4 - App. p 2-9) so that this Supreme Court may have some clue and flavor as to the enormity of the injustice done. The entire transcript (411 pages) was available to the courts below in addition to 78 Exhibits. Voluminous indeed, and difficult to plow through, but indicative of my pertinacious diligence.

Also parts (pp.59-70) of the testimony of my Executive Officer of the 503rd Airborne Infantry Combat team who also testified personally (pp.45-127) at the 1983 ABCMR hearing are placed in the Endnote Section of the Appendix as Endnote 5 (App. p. 9-19).

Dr. George Wheeler Roark, Jr., was introduced to the ABCMR as a medical doctor, as an expert medical witness on behalf of the applicant (pp. 149-224). This part of his 1983 testimony on page 152, 153 can be found in the Endnote Section of the Appendix as Endnote 6 - App. p.19-20).

I ask this Supreme Court to note that the medical testimony of Dr. Roark briefly cited in the appendix was impugned by the minority of the Board in 1983. It was reiterated as new evidence in 1991 in a stronger fashion expressing his opinion of

that non-medical minority of the ABCMR and the incompetence of the medical behavior throughout. This also is new evidence of 1991 presented to the court, but disregarded as "not new," "not relevant," but it goes to the heart of the allegations! (Endnote 7, App. p. 20-24; full text, App. p. 337-345)

I ask this Supreme Court to recognize and remember that this petitioner was the only Catholic priest paratrooper qualified in the entire Pacific area and also with top secret information on a strict "need-to-know" basis. This knowledge concerned airborne operations into Laos. Plans were made on my desk!

The critical and hazardous nature of the situation then prevailing in southeast Asia may be discerned from a memo of 24 January 1961 of Clark M. Clifford to President Kennedy in regard to a previous

transition team meeting which is listed as Endnote 8, App. p. 24).

This top secret information I could not divulge even to the Chief of Chaplain's office without proper clearance even if given the opportunity to do so, which I was not. That office had already determined before I left Okinawa and prior to any document of General Caraway that this petitioner was to be RAD, Removed From Active Duty (App. second last folded page). This pre-judgment also was kept from me. No due process! Not even a show cause hearing! I could not disclose this top-secret information even to the Speaker of the House when I personally talked to him in 1963 in his office in Boston.

I also ask this Supreme Court of the United States in accord with Rule 17 to recognize there are special and important reasons, impinging upon church and state

relations, to grant a writ of certiorari, to remand, to decide or otherwise rule in its discretion and also recognize that the lower courts have "far departed from the accepted and usual course of judicial procedure" as to the proper ascertainment of facts and so far "sanctioned such a departure by a lower court" in law, as to call for an exercise of this court's power. It seems as if the judicial bureaucracy, "law clerks and elbow clerks" as Judge Patrick Higginbotham of the Fifth Circuit described them on C-Span during a workshop of the Federal Appeals Court Judges in February 1993, are writing the opinions. He estimated that 98% of the work was so done.

Ruth Bader Ginsburg, the recent nominee for the Supreme Court on the occasion of her nomination approvingly quoted Chief Justice William H. Rehnquist

as saying that a good judge is bound to apply the facts and the law to come up with a decision, even if it is "not what the home crowd wants". (New York Times)

This petitioner expects no less. Judge William W. Schwarzer states: "The writing judge or the law clerk may read some or all of the record. Time demands being what they are, rarely will the other judges read much of the record. But even a reading of the cold record on appeal gives the reader little confidence that he or she has a fair understanding of the import of the evidence and the proceedings." (See footnote below.)

Again this petitioner reminds this Supreme Court that the job description and function of this petitioner as set out in

Footnote:
In his chapter on "Defining Standards of Review" in the publication "The Federal Appellate Judiciary in the Twenty-First Century" Federal Judicial Center (1989) Chapter III, p. 102

the Code of Federal Regulations (510.1) pertains primarily to the internal forum of conscience and especially so when combat operations are imminent (App. p. 415).

Some of the Federal Rules of Civil Procedure (F.R.C.P.) and the Federal Rules of Evidence that have been ignored and overlooked despite this petitioner's raising of the issues and a request for a Civilian Investigative Demand (C.I.D.) in the presence of fraud as a "Private Attorney General" are listed (Endnote 9, App. p. 25-32).

On February 1986, I petitioned the ABCMR for reconsideration under Army Regulation AR15-185, par. 22; and 18 U.S.C. 1552; based on new evidence not previously considered. In the petition for reconsideration I stated therein, "...I have constantly and consistently

asserted that my separation from the U.S. Army was improper and unjust, illegal, and fraudulent, consequently null and void. Not only was my severance unjust, but was in contrast and in violation of existing Army regulations for a Regular Army officer in addition to a violation of my constitutional rights and statutory law (10 U.S.C. 3785). I was denied due process of law and was the subject of prejudice, discrimination, hasty and arbitrary judgments based on libel and slander which have seriously affected my career and profession. I demand to be made whole. I seek the restitution of my Regular Army commission with all appropriate adjustments in rank and privileges. I demand to be restored "nunc pro tunc," "now for then."

Also therein, "I am enclosing documents lately obtained from five

medical doctors which to me indicate the presence of medical malpractice. I am enclosing documents from three lawyers who have analyzed my testimony of 1974 and 1983, asserting that there is no conflict or contradictions in my testimony, as was alleged in the ABCMR minority report of 1984...." "....I am also enclosing a document from Dr. Hurwitz, a psychologist at Boston College, who clearly indicates the injustice that has been perpetrated..." (App. p. 215-220).

This petition for reconsideration and all the material, new relevant evidence at that time, was arrogantly returned to me with no covering letter, no explanation, merely shipped back to me 10 March 1986.

I resubmitted my petition on 1 April 1986 and again this was opened and returned without any comment on 7 April 1986.

The third time I personally submitted my petition on 29 April 1986 and Congressman Mavroules' office did the same on 22 April 1986. In a letter to me dated 23 May 1986 from the Executive Secretary of the ABCMR in response to my letters and inquiries from Congressmen, he stated: "Evidence which is repetitious or based on emotion or which tends to elaborate on facts supplied previously considered by the Board is not deemed to be new or relevant evidence..." (App. p. 221-224)

I again wrote to Senator Kennedy on 1 July 1986 indicating the grievous errors by the Board and again presenting a record from the Chief of Chaplains office which had been previously withheld from the Board in 1980 (App. p. 197, 198) and which clearly, most clearly indicated the Chief's prejudgment that this petitioner was to be Removed from Active Duty (RAD)

even prior to my departure from Okinawa on 6 October 1961 (prior to putative Caraway letter of 11 October 1961 - App. second last folded page). All these petitions for reconsideration incorporating the scientific evidence of several competent medical doctors, my commanding officer and others were arbitrarily rejected by the Board (App. p. 227-334). This arbitrary and arrogant rejection was to have further negative ramifications as these testimonies were apparently considered as "not before the Board" in later judicial actions or completely overlooked and ignored by the courts. Again in 1992 this material rejected arbitrarily by the ABCMR in 1986 was considered "not new" by the First Circuit. This continuous suppression of evidence, first by the agency and then by the courts, is a prime example of "sand bagging," caught between

two players, both antagonistic. This is sad and sorry justice!

The U.S. Attorney argued that the ABCMR decision was a "nonreviewable military personnel decision." It is not! The ABCMR is a civilian board.

This same evidence gathered in 1985-1986 in addition to the evidence of 1991 was later to be declared by the First Circuit (92-1440, 7 December 1992), as not new or recently discovered. Is this fair> I certainly have not been sleeping on it nor have I been lacking in diligence, but I have been obstructed. This is the particular issue at stake in this petition for certiorari in 1993. Please remember that all my motions under Rule 59, and others to vacate, to reconsider, were denied by Judges Young and Wolf.

In this second motion for reconsideration to Judge Young, I cited

Title 5 U.S.C. 706 (Endnote 11, App. p. 30-31)) on the Scope of Review and 5 U.S.C. 552(4)(B) (Endnote 12, App. p. 31-32) regarding the withholding of a record and 32 C.F.R. 581.3(d)(5), Access to Records (Endnote 13, App. p. 32).

On 25 November 1987, I presented a motion to lay aside, to vacate the judgment of 26 October 1987. Therein I cited Judge Frankfurter; "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy. A democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one sided determination of facts... decisive of rights." (341 U.S. 123, 171, 71 S. Ct. 624, at 170, 70 S. Ct. at 647).

In this same motion under Rule 60, I asserted that the basic unauthenticated

document "has been fraudulently concealed from me." (Endnote 12, App. p. 31-32).

I also asserted "misrepresentation to Speaker McCormack in 1964 (App. p. 373-376);" fraud "upon the court in the 1980 court of claims action in that the government certified as true and exact what was not so (App. p. 421), denial of liberty; denial of "free exercise of religion; denial of a basic show cause hearing in 1961."

In 17 December 1987 Judge Young declared that his court was without subject matter jurisdiction and denied the motion, "not on the merits but on jurisdictional grounds." (App. p. 116, 117) Again not before the court? However, I asked for clarification of this decision of 17 December 1987 as I had also timely presented a motion on 9 November 1987 under Rule 59 about which F.R.C.P.

4(a)(4) says that "a notice of appeal filed before the disposition of the above motions shall have no effect." But who am I, a non lawyer, to contradict a federal judge when he says he has no subject matter jurisdiction and can take "no action because the case is presently under appeal" as he did on 7 January 1988?

Again in this action, the questions remain was the whole record reviewed? Was it ever whole? Which one was true and exact? Who has legal custody? Was new relevant medical evidence previously spurned by the ABCMR and once more presented to the court disregarded or overlooked? No basis for relief? Nonsense!

I was now faced with these judicial decisions which I believe to be flawed, erroneous, not fair and unjust. I realize judges are not called upon to run the Army and that they give great discretion to

government agencies in regard to statutory construction and interpretation (the Chevron doctrine), as well as to the latter's presumed expertise when there is some ambiguity. But a line has to be drawn when there is no ambiguity, when fraud, and further concealed fraud, withholding of evidence, open violation of statutory law, the crime of conspiracy, and the denial of basic constitutional rights and their violation are involved, requiring strict scrutiny by the courts. Certainly the Statutory Law expressed in 10 U.S.C. 3785 (1185) is unambiguous as is the Federal Code. This has not been resolved so far. Too much discretion has been allowed, if that is what it was. I call it prejudice, bias and favoritism. It can hardly be called equal justice before the law, or "equal protection."

Perseveringly and diligently, I once more brought suit in the District Court of Massachusetts (90-11297 WF) under RICO (18 U.S.C. 1961, seq.) 16 May 1990, asserting among others that the government had conspired with officials in my church, in collusion, using mail and telephone to defraud, extort, and take away illegally my property (liberty also), namely my Regular Army commission as well as my reputation and had in a pattern obstructed justice, as in a "racketeering activity." In this instance, I reluctantly named my church officials as co-conspirators in joint actions, even though they themselves had been deceived by a false report, which they considered authentic (App.p.242-244). This is a violation of the "Free Exercise Clause," as I was deprived of exercising my religion with the troops.

This Supreme Court has stated, "From the beginning, there has existed a Rule of Equity to the effect that under certain circumstances, one of which is after discovered fraud relief will be granted against judgments regardless of the term of their entry." --Hazel Atlas Co. v. Hartford Co., 322 U.S. 238 (1943) (cited in plaintiff's response in opposition to Motion to Dismiss, p. 3 in District Court, Sept. 1990) with tabs of medical evidence of Dr. Rohde and military testimony of my commander and executive officer of the Okinawa period. All overlooked or rejected then as well as later in 1991.)

After my briefs were submitted with opposition thereto by the assistant U.S. Attorney, Judge Wolf called for a status meeting on 5 April 1991 at which he stated that he would read the case. But the docket sheet shows that the case was

closed the same day despite the fact that hundreds of pages had to be read and analyzed. I suspect a "result oriented" judgment..., but again, what is a pro se non-lawyer to do? I did not receive the official court report of this 5 April 1991 decision or the 25 April 1991 order and so notified the court on 2 July 1991, having learned of the judge's decision unofficially only by service through the adversary attorney for the Archdiocese for Military Services U.S.A. in a letter to the court dated 18 June 1991 "to request the entry of final judgment" in which was enclosed a proposed judgment for the court's signature. What kind of monkey business is that?

Again in this action as in so many others no consideration was given to the issue of whether the document of 1961 containing the basic allegations was

authentic or not, nor to the issue of where the original document was, supposedly official and in legal custody of the government, or if it was fraudulently concealed and suppressed or destroyed. 18 U.S.C. 1505 prohibits the destruction of documents sought in connection with an administrative proceeding and 18 U.S.C. 1503 covers judicial proceedings. Both statutes prohibit the attempt to obstruct justice.

This petitioner filed several motions to vacate, amend, under Rules 59 and 60 F.R.C.P. to no avail, denied 5 August 1991. Yet my letter of 25 April 1991 with attachments was not entered on the docket as Item 34 until 7 October 1991. Questions do arise! (App. p. 148) Later in these communications and motions was one under Rule 60 F.R.C.P. on 19 November 1991 to Judge Wolf which charged fraud and

presented new relevant recently discovered evidence which rebutted the medical and military charges expressed in the putative 1961 Lt. Gen. Paul W. Caraway document. The denial of this motion on 21 March 1992 and the affirmation thereto is at bar right now (App. p. 175).

One piece of testimony contained in a letter dated 18 October 1991 of Doctor George W. Roak, MD, who had also testified in the 1983 ABCMR hearings, clearly contradicted the medical assumptions prevailing up to that time by the court and administrative agencies. In effect, this doctor accused the Military Medical Service of incompetence. But this senior doctor's latest testimony which rebutted any charge of "alcoholism" (App. p. 190) was rejected again as somehow "out of time." (App. p. 337-345).

A fellow officer who served with me on Okinawa (1960-1961), Lt. Col. T. Kelly (Ret.) gave testimony clearly contradictory to at least one of the paragraphs of the putative 1961 Caraway document. These letters were dated 6, 21, 23 August 1991. (See App. p. 346-352.)

I had previously sworn in 1981 that all the allegations were in error, (App. p. 394) but again, no one has seen fit to recognize my denials or give them any credence at all! In fact, the first time any diagnosis of alcoholism was made was 4 October 1961, two days before I flew off Okinawa on 6 October 1961, despite the fact that each admission sheet at the hospital had recorded "No A or N" (no alcohol or narcotics) at admission. The Caraway letter (still missing in 1993 from official files) was dated 11 October 1961 (App. p. 361-365). What a screw-up!

Another letter of 31 October 1991 from Dr. John A. Day, Jr., MD, containing medical information supportive of my claims and challenging to the government's diagnoses was also sent to the District Court 19 November 1991, but disregarded (App. p. 353-360), as "out of time" (App. p. 190), lacking "due diligence."

Lt. Col. (Ret.) Kelly's 1991 letter has been badly distorted and misinterpreted by all so far. Lt. Col. Kelly, then a lieutenant in 1961, was in charge of all airborne operations for my unit, the 2nd Airborne Battle Group on Okinawa. Because of typhoon alerts and actual typhoons, air craft had to be evacuated from Okinawa in September 1961 and an airborne operation planned and managed by this petitioner called "St. Michael's Day Jump" had to be canceled by me and Lt. Kelly, days before the

scheduled parachute jump. Yet in the putative Caraway letter of 1961 it was stated therein that I was "incapacitated," and they had to call off the operation and cancel the Catholic Mass that was to have been celebrated by me after I jumped. These comments in the 1961 Caraway letter are pure fiction. But they have been constantly employed against me in charges of dereliction of duty and failure to perform religious duties as in the copy I finally obtained in 1980 (App. p. 361-365).

Lt. Col. (Ret.) T. Kelly's letter should put this lie and falsehood to rest, but the courts have construed his testimony as a mere meteorological description undoubtedly because of their lack of knowledge about airborne and paratroop operations and their less than careful reading of the testimony (App. p.

346-352) and comparison with the 1961 letter. (App. p. 361-365)

It is interesting to note that briefs and the appendix sent to Judge Wolf on 25 April 1991 (the same day as his order), while this petitioner had no notice of any decision were not placed on the docket sheet as Item #34 until 7 October 1991 when I discovered them in place in the court house, yet missing from the docket sheet. Please note the time discrepancy (App. p. 148). I informed the docket clerk who then made note of it in the docket sheet at that time (10/7/91). Once more the suspicion, well founded, arises that these matters were not even read, not to speak of given consideration. Needless to say that my confidence in judicial bureaucracy has been shaken. This is especially so since I had already written to him 29 March 1991 complaining of fraud,

collusion, obstruction of justice, violation of the First Amendment.

On 25 April 1991, I again complained of the violation of the Administrative Procedure Act (APA), the Freedom of Information Act (FIOA), pointing out the absence of a supposedly official document from government files, prejudice in the Chief's office, the rejection of evidence by the ABCMR in 1986, I indicated to him the pertinent Rules of Evidence important in this case, i.e., 803, 902, 1002, 1003, 1004, and 1005.

Yet, Judge Wolf denied all my motions under F.R.C.P. Rules, 52(b); 38(a)(b); 59; 60(a)(b) on 5 August 1991 (Docket No. 27, 30;App. p. 149, 174, 175).

I moved to the U.S. Court of Appeals (1st Circuit)(91-2027) which is a "companion case" now in 1993, again including much medical evidence from

several doctors, testimonials of my commander and executive officer while I was on Okinawa, a psychiatrist, three lawyers who reviewed the testimony before the ABCMR in 1974, and 1983, plus the new recently discovered evidence and the government's continued failure to provide access to the original disputed document.

In the Court of Appeals' affirming opinion, they asserted that this petitioner was "merely changing his theory of recovery" and it was an "endless pouring of old wine into new bottles." But, I have consistently asserted that the government officials have put poison in the wine and have so far tried to conceal it. The presence of fraud and the concealment thereof even to the point of making a false certification of my official record to the court itself is clearly fraudulent, certainly unfair.

This Appeals Court in the companion case 91-2027 acknowledge my complaint of fraudulent concealment (App. p. 171), but considers it merely of denial of access when it is clear that the proximate cause, the Caraway letter itself was a fraud, a false conveyance and the governemnt has tried to conceal this fraud by charging my church with responsibility for legal custody. If this isn't fraud upon the court and a nefarious, if not criminal action, I, as a non lawyer, will eat my hat. How much proof does the court demand? I believe my papers, voluminous and perhaps vexatious as they may seem to be to the law clerks who are supposed to read them, indicate fraud, concealment thereof, suppression of evidence, violation of constitutional rights.

This Court of Appeals has asserted that I have had a "fair and full

opportunity to litigate in previous action" (App. p. 170). Not so! How can this flawed adjudication be fair to any reasonable person? The suppression of evidence was permitted along with the use by the ABCMR of flawed, tainted contents of an unauthenticated document.

In the same way, how could I have discovered the cause of my injury in 1962 as this appeals court asserts in 91-2027 (App. p. 171), even though aware of the injury when the "proximate cause" was illegally withheld and I was denied access thereto to even a copy until 1980 and then the government denied responsibility for legal custody while the church through Bishop Roque finally declared in 1988 that it was not the legal custodian of military documents and did not possess the original (App. p. 425) which the Federal Rules of Evidence demands (App. p. 25-29). Both

entities played a game similar to two people tormenting a dog by throwing a ball to each other. Here it is! No there it is! Can anyone call this fair treatment, even to a dog? The same type of torment of forcing me to chase from one agency to the next, from one forum to another while no one in authority chose to face the unauthenticity of the basic document containing false allegations is unfair. Then after much chasing around, the courts say the game is now over, you are too late and you should have been more diligent in chasing around. You should have chased Lt. Col. (Ret) Thomas Kelly around the world to Vietnam and back, and you should have pursued Dr. Roark even though he was retired and had already misplaced some of my letters. This seems to be the rationale expressed in the latest opinion of the First circuit, 92-1440 (7 December

1992) in regard to a post-judgment motion when they say, "None of these items of evidence meet the Rule 60 (b)(2) requirement that the evidence could not have been discovered in time for a Rule 59 motion, i.e., by July 1991. Please remember that Judge Wolf had denied a Rule 59 motion presented on 3 July 1991, after the judgment of 2 July 1991 (App. p. 174). The court ignores the fact that Dr. Rohde's testimony in 1985-1986, including this partial quote, "...I do not believe that the label of alcoholism can be, or even was, justified by anything known to me..." was arbitrarily spurned, arrogantly spurned, by the ABCMR in 1986. In all this maneuvering, the First Circuit overlooked the fact that I had sent this material to Judge Wolfe 25 April 1991, but it was not placed on the docket sheet until 7 October 1991, when I discovered

the material in the court house obviously unread, unconsidered. If an agency rejects evidence and the court does not read it until much later, after judgment, if at all, can it properly be dismissed as not new, not recently discovered? To do so would seem to be a travesty.

Please remember I did present a Rule 59 motion, timely, but it was denied by Judge Wolf on 5 August 1991 (App. p. 174). Also please remember as I told the First Circuit that I did not receive official notice of Judge Wolfe's action/decision of 25 April 1991 until 2 July 1991. Wow! Please notice the time gap on the docket sheet entry date between items #24, and #34--both 4/25/91! (App. p. 148) Yet my Rule 59, 60, 52(b) and 38 (a)(b) motions were denied 5 August 1991 (App. p. 174). But I again presented my Rule 60 motion claiming again fraud, concealed fraud,

continued and continuing misconduct of the adverse party for which the time of one year is granted by the rules. This motion which is at issue here now was filed 19 November 1991 and was denied by Judge Wolf 21 March 1992 (App. p. 175).

Please remember that Rule 60 (b)(3) F.R.C.P. concerns fraud, misrepresentation, or other misconduct of an adverse party which I stated as reason for that motion. Item 6 of that Rule speaks of "any other reasons justifing relief." Again we observe an incident or occasion when probative evidence is overlooked, ignored, disregarded by the courts below and, in effect, once more obstructs the course of justice. Can limitations hold in such circumstances? Or res judicata?

Yes, in 1979, I introduced the charge to the ABCMR that "a forged document had been submitted by unknown persons" as the

Court of Appeals stated. The First Circuit said in regard to limitations that I filed a RICO suit (1990), "not until eleven years later," but even a cursory reading of this case history will make more than clear that I was not sleeping on it, but fighting all the way on many fronts, despite the agency's and the court's inattention.

The ABCMR had asserted many times that the contested and sought after document was "properly in the hands of your church." The Archdiocese was introduced reluctantly as co-defendant in 1990, as I am forbidden by Canon (church) Law to bring suit against an ordinary, a bishop, because of an act of discipline on his part, even though they, both the church in New York and Boston, had been flummoxed and bambooseled! But the Archdiocese of Military Services, U.S.A.,

acted as it did, relying on the authenticity of the 1961 Caraway report and Bishop Dimino in 1984 has so stated (App. p. 242-244). The Archdiocese was a duped and unwitting co-conspirator from the beginning, but they were negligent and reckless by not adhering to the Federal Code of Regulations which states that they "abide by the applicable regulations and policies of the Department of Defense" (DOD) 32 F.C.R. 65.4(b)(v). To dismiss the Archdiocese as "time barred" is again not fair as they withheld a copy of this spurious report from me for twenty years contrary to even church law (Canons 1732-1739) and supplied a copy only when forced to do so by a higher authority in the church in 1980. They refused to declare that they did not have the original document or legal custody until

1988 (App. p. 425), well within any limitations period.

I also ask this Supreme Court to remember that this petitioner had been truly operating pro se, by himself alone, in searching out the truth over many years, as a non-professional lawyer and investigator, but as one who has been long aware of the injustice done, and has experienced obstruction, evasiveness, fraud, concealed fraud on the part of others.

It may well be that an extraordinary writ, a petition seeking a writ of prohibition, or a writ of mandamus to the U.S. Government, the Secretary of the Army, the ABCMR, be issued in the wisdom of this Supreme Court to clarify the existence, or non-existence, as well as to the authenticity or non-authenticity of the missing document supposedly sent by

Lt. Gen. Paul W. Caraway addressed to the Chief of Chaplains, U.S. Army. If so, I do hereby petition. The copy clearly identifies the addressee (App. p. 361). The intentionality of these actions by both adversary entities can be termed malicious when there is an element of fraud, violence (intimidation and threat), wantonness, and wilfulness or criminality. It is not enough for them to declare that they didn't know all the facts to be excused. They knew the law applicable to Regular Army officers and illegally, by threats, avoided the law (10 U.S.C. 3785), in effect were joint tort feasors. Recklessly! "...`a private association's failure to afford procedural safeguards may result in the imposition of damage liability without inquiring into whether the association's action lacked substantive basis...'" (Greene v. U.S. 376

U.S. 149 at 162). I made an appeal on 16 April 1992 from the denial by the district court of a post judgment motion for reconsideration based on new, relevant, newly discovered evidence numbered 92-1440 in the Appeals Court (Companion Case 91-2027).

The whole history of this case, not only the denial of this motion, which involves relations and interrelations between church and state, law, top secret security regulations, Federal Code of Regulations, Rules of F.R.C.P., Federal Rules of Evidence, and equity and common sense may be described as a case of one who writes a phony check to draw from another's assets, from another's deposits, causing loss, damage and injury and continues to do so while casting blame on another for responsibility for the phony check. I should think that the courts

would be alert to false conveyances. To say that this petitioner has not been diligent in attempting to discover the truth is a monstrosity. The above written and described history should be sufficient to discredit that canard, if indeed, this history is carefully read.

This saga also should be more than sufficient to rebut any prior holding of res judicata or statute of limitations, or that the ABCMR was "not arbitrary or capricious." Actually the Department of the Army was in violation of Statutory Law and still is. This petitioner prays that fundamental justice be done and proper redress be made. My reputation is at stake!

Sincerely,

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Greenbush, MA 02040-0154
(617) 545-4330

Service Made By Mail of Reformed Petition, 5 ~~July~~ Aug 1993:

U.S. Solicitor General
Department of Justice
Washington, DC 20530

Army Board for Correction of Military Records
The Pentagon
Washington, DC 20310

Surgeon General, U.S. Army
The Pentagon
Washington, DC 20310

The Chief of Chaplains, U.S. Army
The Pentagon
Washington, DC 20310

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COWHIG V. STONE, ET AL.

APPENDIX

APPENDIX

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A. N.B.Disposition Form #96 (24 Nov. 1961) to Adjutant General from Chief of Chaplain's office Item #11, signed by Col. Bernard J. Fenton, USA, under Remarks: "The ecclesiastical indorsing agency will remove Chaplain Cowhig's ecclesiastical indorsement if his resignation is not accepted" too complex to be put into Appendix. Full copy is in petitioner's files.

B. N.B.List of all assignments in record kept in Chief of Chaplain's office in sequential order. Three are cited here. Complete copy in petitioner's files.

_____

_____

_____

2nd Abn. Btl. Gp., 503rd Inf. Combat team, Apo. 50, SF, 10 June 1960 (66A)

Being medically evacuated from Okinawa (to be RAD) (TWX to CG USARYIS)

Evacuated via air 6 October 1961 per TWX from CG USARYIS 7 October 1961 (DA in)

On second thought, the <u>complete</u> copy of A B above will make more sense to you and clarify what happened in 1961 - <u>apparently overlooked by all below</u>. - Inserted separately herein in folded manner following the last two pages, in the interest of clarity and justice.

ENDNOTES

[1] (F.R.C.P.) 44(b) in regard to the lack of record says: "A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record...is admissible as evidence that the records contain no such entry or record."

[2] Title 10 U.S.C. then 3785, now 1185, stipulates under Rights and Procedures:

(a) Each officer under consideration for removal from the active list of the Regular Army under this Chapter shall be:

(1) notified in writing of the pendency of any proceeding for his removal;

(2) allowed reasonable time to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry and a board of review; and

(4) allowed full access to and furnished copies of records relevant to his case at all stages of the proceeding.

3 32 CFR 64.4 (b)(v) states: Under (b) - "Criteria for Ecclesiastical Endorsing Agencies;" "...each religious faith group shall: (v) "abide by the applicable regulations and policies of the Department of Defense."

4 Q The record further indicates, and I specifically refer I think to your statement of 23 September 1961, Colonel McMahon, that you had a conversation, that you consulted a Colonel Hannum who was the chief of neuropsychiatry at the Okinawa hospital... (I, this petitioner previously had a 15 minute conversation with Doctor Hannum at which he asserted that they had a great deal of difficulty handling bachelor [celibate] chaplains.) (Supplied now by this petitioner and previously in my pleadings. Dr. Hannum had no knowledge of the critical situation then prevailing.)

A Yes.

Q ...and that it was related to you that the best environment for the Applicant, according to Dr. Hannum, would have been to send him back to CONUS.

A Yes, but I'd like to elaborate on that later.

Q Please.

A Any time you say. Actually, in going back and looking at this case, this man was suffering from hypertension and nervousness, and it was associated with the use of alcohol, I guess, to take care of what was going on.

When I spoke to Hannum, Captain Hannum or Major Hannum, he mentioned to me, now remember I'm a layman, I don't know anything about medicine, he mentioned the best thing to do with him would be to put him on Alcoholics Anonymous. And if that didn't work then ship him back to the States.

Well, I knew I had a gem in this man; in

fact as far as I was concerned he was the number one in the Army as far as chaplains were concerned and I looked at him as being the future Chief of Chaplains, is what I thought of the man.

So here was the case here of a man being recommended to go on AA. I said all right, this is what the medics say, that's the only way we can help the man.

Now remember, I got a unit on training combat and all like that, my mission is is there and I wasn't giving him too much thought maybe, which I should have given to the man. I knew that because I had a wife and five children over there, so I had a communication with the dependents. I had people like McCoid, he's one of the many fine officers I had as well as Sergeant Roeigiers, real good people. They wouldn't allow any scandal out there. Well, as soon as this fellow goes down into the AA, scandal would come up from all channels.

I wasn't really thinking, to tell you the

truth, at that time. It's what the doctor said and that's where I---and I say this is where the problem started. This is where I should have been thinking more and this is where I got the wrong dope, from the doctor. So here I am saying well, now I'm helping the guy, I should say Father, and I wasn't I was destroying him. I utterly destroyed the guy because I put him in a position...

(Witness becomes emotionally upset.)

Counsel: Are you all right, Colonel?

Chairman: Just take a few minutes to compose yourself, Colonel. It'll be all right. Take your time.

(Witness continues upset for a few seconds.)

Counsel: Might I suggest...

A No, I can go on. So I put him in a position where he was really frustrated. I have the efficiency report here. You people refer to 48A, that's Colonel McCoid's...

Counsel: That's Exhibit 48A you're

referring to?

A That's 48A. If you look on page 2, "a" paragraph, 10 lines up, here is Colonel McCoid: "I am ashamed to admit that on at least two tests I instructed Father Cowhig..." et cetera, et cetera, "...let them go to hell."

So here's the executive officer telling this lowly captain, as far as USARYIS, "tell them to go to hell." Here I am, a colonel, telling him to go to AA.

So here is the man right in the middle. What is he going to do? What would you do? You would have blown your stack, that's what you would have done. This man was remarkable that he was able to stay in and do his job.

I feel that was the source of the whole problem, because what you had here, and I didn't know it and the doctor I guess didn't even know it, that this man had hypertension and nervousness, counter-balanced with the so-called use of alcohol. Well, the use of alcohol might

have been minor then, but as soon as he moved into the AA he got a stigma attached, and everything was from then on he's a drunk and associated with liquor and so on. That was not the case.

So what had happened was that we should have in the Army treated this person for this medical field, and instead this was overshadowed by the use of alcohol. And that's what I say the whole thing started.

Now, I'd say the whole cause of this, three people. I'd say this guy, I'd say Father Walsh was a vain, opinionated, jealous of his authority, and all this business here that came up about the scandal, morale and welfare about this guy, a bunch of lies.

Father Walsh tied in with a personality here that overshadowed him, and he was on a senior level. At this time I was down there and I was banging into the staff from the line. And then we ran an operation in Hiramota (phonetic), an

island close by, so we could get jungle training for our men, E and E, evasion and escape.

We sent one of our officers to Malasia, to the British jungle school. He came back and said it was wonderful. So here I am, I thought boy, I got something really going. The next thing I'm called in from USARYIS for tearing up the land because it was the Okinawans' area where they wanted to live and so on.

Right away we started to get some behind the eight ball, the novelty wore off. When we first arrived there we had---so we would ingratiate ourselves with the command who we called Legs, incidentally, they were paratroopers, and when we came in there we came in as a combat unit with one idea, going into Southeast Asia. That's the way I was briefed. And we were going into Southeast Asia and we came into Okinawa as a quiet, tranquil area.

The first few days we were there, you know, get in nice with the command and tell them, so we

set up sky diving. We had five people jump out, the winds were up and they were coming down and thought they opened pretty good and the last one I thought he was going in and who was it? Father Cowhig.

The men were crazy about him, doing stuff, just risking his life and all that stuff.

I just wanted to mention that I see the cause of this, one from Hannum, one from Walsh, and one from me, for not having the foresight to look in and take care of the guy. That's the way I look at it.

Q Colonel McMahon, if I may, the record indicates, in certain elements of the record it is indicated that the Applicant was relieved from command when his assignment was terminated...

A No...

A We had been assigned a responsibility for participating in a airborne entry into Laos with the probability of dropping on the city of Hai Binh Khouang and also to seize the Nong Khay

Ferry by drops, both north and south of the river, so that larger numbers of American forces, particularly the 3rd marine Division, would be able to come in and secure the area. At the time when Captain Kuong Lai had seized the government temporarily and when the center- and right-wing elements under Saravane Phu Bia and Phy Menovason were particularly active and the United States was very much concerned because of the activity of the Chinese on the northern frontier, and, also, or course, the diversionary strength of North Vietnam and their apparent aggressive intentions there.

Q Colonel McCoid, at the time in question, was the mission or the missions of your organization of a classified nature?

A They were, highly classified, indeed.

Q Were some of these missions--I don't want to breach security--I have no security clearance at this time--were missions of your organization made known to the Applicant at that time?

A They were made known to the Applicant because he was an important member of our staff and essential to our success in battle. They were not broadly known on the island of Okinawa. they were known by the planning staffs, 9th Corps; they were known to the planning staff of the 3rd Marine Division and to our own people. But, certainly, anyone without the need to know was not given access to these.

Q Now, how frequently would you have contact with the Applicant in this time frame between June of 1960 and October of 1961?

A On an official basis, I would talk to him with great regularity, two or three times a week, but I saw him every day, and on a social basis, of course, I saw him--we were a small, cohesive organization, rather ingrown, perhaps, and I saw him a great deal there.

Q Would this be including after-duty hours?

A Oh, yes. It was a close--quite close, personal relationship, actually. Q All

right. Now, as far as offices were concerned, where was your office in relation to the Applicants?

A We were both on the second floor of the Headquarters Building and the entrances to our offices were diametrically, or diagonally opposite, I should say.

Q Incidentally, what was the size of the island?

A Well, it was 67 miles long--and statute miles--and it could be at one point as wide as 16 miles and as narrow at one point as just over a mile. It was small and constricted.

Q In that statement, Colonel, you mentioned the matter of pressure--pressure--the Applicant being under pressure--and Counsel has indicated to the Board in his opening remarks that one of the factors that we feel are significant as far as the Applicant's functioning during this time interval, particularly the June '60-October '61 time frame, particularly in 1961, the matter of

their being essentially two chains of commands, two echelons of command, that he had to deal with, each making demands upon him, one being your organization and one being from the USARYIS, 9th Corps, particularly the one of the senior chaplain, at all times relevant to the case, Rev. Walsh. Is it in fact and was it in fact a significant factor bearing upon the Applicant's performance of duty or his ability to perform duty during this time?

A It certainly would have been. From my point of view, I should say that--

Q Please.

A --his performance of duty was always marvelously fine. I could never have reproved him for any failure. He was a classic example of what a chaplain should be. Now, I'm not a Catholic and I do not know whether his performance of all his Catholic functions met muster with his ecclesiastical superiors. From the soldier's point of view, had I carved one

from stone, I would not have had a better man than this.

Q And did this prevail throughout his entire tour of duty?

A In my experience, it certainly did. He was never, never found wanting in any particular.

Q And is the Board to understand--Counsel has mentioned this conflict--how did this--as you perceived it and observed it, how did this conflict affect his operating?

A Well--

Q What do you recall? Can you recall any specific circumstances that you can--

A He was a noncomplainer, but he was on occasion put into impossibly difficult situations and I was sometimes the author of these. We would have operational requirements and at the same time he would have been assigned area coverage responsibilities by Captain Walsh, who was the Senior Catholic Chaplain, whose responsibilities were chaplain coverage,

island-wide. And where these clashed he required guidance and he would come to me and say, "Here, I face these two conflicting requirements, demands on my time. Which has priority?" I used to say to him, "Chaplain, where are you assigned? Who writes your efficiency report? And if that leaves you with any doubt, you tell them to go to hell, because you belong to us and you're going with us, and I don't care whether these other requirements are met. You belong to this organization." I was a Lieutenant Colonel. He was a Captain. It was unfair of me to have told him to tell them to go to hell, but I did. I suppose I was a bit less mature than I am now.

Q Did you in fact use such language?

A Oh, yes, certainly.

Q In fact, it may be tempered under the circumstances?

A Well, I wouldn't have used anything much more profane than that, certainly, but I would have asked them told them to.

Q Did the chaplain comply with your wishes?

A I am sure he did not. I'm sure he did not. He is a few years older than I am and I think probably he understood the proper approaches to be used and I'm perfectly persuaded that he never communicated that to higher headquarters.

Q No. What I'm saying, Colonel, he did obey--

A He obeyed our instructions, yes. Yes, he certainly did.

Q And you had a realization that this was causing him--

A I didn't know what it was causing to him internally, but I certainly knew that he was under--I can apply pressure and I applied it in his case and there was no doubt left in his mind as to where he was to be.

Q Now, when you went on these missions. For instance, is the Board to understand you went to the Philippines?

Q Yes.

Q Korea?

A Yes.

Q And where else?

A Taiwan.

Q At those times, were your specific missions highly-classified missions, or the plans for them?

A Yes, they were certainly classified. They were classified at secret level, as all planning or exercises were at the time.

Q Now, is the Board to understand as far as the Applicant went to Rev. Walsh who may have made some--say do this or do that or do something else, sorry, I've got to go off with my unit--is it not a fact that the Applicant would not have been able to disclose the specifics of the actions or the operations?

A No. He would not have been because Chaplain Walsh did not have a need to know.

Q And was the information on a need-to-know

basis?

A Yes, yes.

Q Did you perceive--and I believe in your statement--I may be wrong--but it seems to me that in your statement you indicated that he was antagonizing his ecclesiastical superiors by complying with the needs of his organization?

A- Yes. I felt he had to be because he was not able to comply with them...

Q Did you at any time observe the applicant under the influence of alcohol?

A Never...

Q Would you describe his personality and his overall makeup one being a hard charging, hard driving individual?

A One of the most aggressive and effective chaplains I've ever seen. Our people weren't all Catholics by a long shot. We had some people who didn't believe in anything other than their own physical powers, but they trusted him, they confided in him and I suppose the word "love" is

extreme but perhaps a good number loved him.

Q Dr. Roark, in connection with your testimony, you're aware that the nature of the request of the Applicant, namely, that he's requesting the voiding of his discharge in 1962 with a correction of the records to show that he continued on active duty until he had completed sufficient service, either 20 or 30 years, to retire, and then, thereafter, be retired by reason of years of service. You're aware of the nature of the request?

A I'm so advised by Counsel.

Q All right. And in connection with the correction of the records, as a matter of law one would ordinarily need to be deemed ready, willing and able to serve on active duty. In that regard, is it the essence of your testimony that he could have been treated in 1961 by competent medical authority and returned to duty? Is that the essence of your conclusions? I'm getting the cart before the horse, but is that the essence of

your conclusions?

A That's my opinion...

"As you will recall in my testimony before the ABCMR I drew upon my 5-hour psychiatric examination of you on September 7, 8 and 23, 1983, plus the report from Wolfgang Riedel, Ph.D., of his 3 hours of psychological testing on September 9, 1983. The opinion expressed in the Dissent that my examination was invalidated by the twenty plus years that had passed since your illness on Okinawa (1961-61) does not take into account the intensity, thoroughness and sophistication of your 8 hour examination by Dr. Riedel and myself. The Dissent also shows naivete in assuming that the "facts" I adduced from my examination were based solely on your verbalized memory of events in your life twenty years earlier. Another implication in the Dissent was that my clinical judgment was impaired or unprofessionally influenced by my retention by your attorney for the sole purpose

of facilitating his presentation of our case. I interpret this implication as suggesting that my conclusions were less than objective, if not myopic in effect; and that my motive in accepting your case was less than professional, both of which implications I reject outright. The opinion of the Board (which consisted entirely of non-medical members) should have been reached on the basis of weighing all the facts, as presented, not (as in the Dissent) devaluing the conclusions of the examining psychiatrist and psychologist."

"The essence or central point of my examination findings and conclusion was that your illness on Okinawa in 1961 was due to a psychoneurosis, (generalized anxiety disorder) which you were attempting to self-treat through increasing your use of alcohol for its tension-reducing and sedative effects. I believe that had your condition been accurately diagnosed, and had appropriate treatment been

provided by competent military medical personnel in 1961 or 1962, that your symptoms could have been mitigated or resolved and you then could have returned to duty."

"As to Dr. Franklin's inexperience and questionable competence, the absence in the narrative summary of your Walter Reed General Hospital (WRGH) hospitalization of any reference to the psychologically traumatic loss of your mother, or to the childhood experiences sensitizing you to the possibilities of mutilating injury or death would suggest the same. Presumably, he was supervised in his work so that the failure to secure senior psychiatric consultation and psychological testing may not be laid entirely on him.

The absence of any medical or psychiatric treatment at WRGH is not surprising, given the guarded prognosis for rehabilitation and recommendation for "administrative disposition" of your case by Dr. Franklin. Once again, I

believe that the outcome of your hospitalization at WRGH represented an error in the diagnosis and medical management of your case. Had you been diagnosed as having an anxiety disorder and treated appropriately for it, I believe there would have been a favorable prognosis for remission of your symptoms, allowing you to return to your military duties.

I believe the notation in the transcript "no audible response" to a question by Mr. Kabatchnick concerning whether I thought your condition was in the line of duty (LOD) or whether it had existed prior to service (EPTS) reflected my uncertainty as to whether or not I had fully understood his question. I did clarify my opinion on those questions on the bottom of p. 204, "I think...he was clearly in the performance of his military duties (LOD) and...I doubt that it (the condition of abuse of alcohol, manifested by excessive alcoholic intake under stressful situations) existed prior to service."

Finally, you asked me to clarify my response to a Board member (Mr. Hobbs) asking me to comment on whether your seeking justice and fair treatment from the Army via your petition to the ABCMR amounted to "a crusade." I found my reply on a page numbered "215B": I don't know whether he thinks of himself as a crusader. I think he may well function in that capacity, in terms of how diligent he's been in persevering in bringing his case to the attention of the authorities. (See appendix)

8 "At this point President Eisenhower stated that Laos is the present key to the entire area of southeast Asia. If Laos were lost to the Communists, it would bring unbelievable pressure to bear on Thailand, Cambodia and South Vietnam. President Eisenhower stated that he considered Laos of such importance that if it reached the stage where we could not persuade others to act with us, then he would be willing 'as a last desperate hope,' to act unilaterally..."

Also pertinent in this situation and in regard to Question 10 and 11, in questions presented, is the official teaching of my Church, in effect in 1961 by Canon Law and later (1965) confirmed by the assertion of the Second Vatican Council, "The Church, at all times, carries the responsibility of reading the signs of the times and interpreting them in the light of the Gospel." (Pastoral Constitution of the Church in the Modern World, No. 4)

[9] Rules of Evidence in regard to Records:

Rule 1002 - Requirement of original - to prove the content of a written recording or photograph the original, writing, recording, or photograph is required unless as otherwise provided in these rules or by an Act of Congress.

Rule 1003 - a duplicate is admissible to the same extent as an original unless 1) a genuine question is raised as to the authenticity of the original, of 2) in the circumstances it would be

unfair to admit the duplicate in lieu of the original.

Rule 1004 - Admissibility of other evidence of contents - The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if 1) originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or 2) original not obtainable. No original can be obtained by any available judicial process or procedure; or 3) original in possession of opponent. At a time when the original was under the control of the party against whom offered that party was put on notice, by the pleading or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or 4) Collateral matters - the writing, recording or photograph is not closely related to a controlling issue.

Notes of Committee on the Judiciary, House Report number 93-650. the committee approved Rule 1004(1) in the form submitted to Congress. However, the committee intends that loss or destruction of an original by another person at the instigation of the proponent should be considered as tantamount to loss or destruction in bad faith by the proponent himself.

Federal Rules of Evidence

Rule 1005 - The contents of an official record, or of a document authorized to be recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence,then other evidence of the contents may be given" (but the government certified under seal that my Official Military Personnel File

(OMPF) was "true and exact" without any General Caraway document).

Rule 803 - Federal Rules of Evidence; 803, in regard to hearsay exceptions, the following are not excluded by the hearsay rule, even though the declarant is available as a witness. (10) Absence of Public Record or Entry - To prove the absence of a record, report, statement or data compilation in any form, or the non occurrence or non existence of a matter of which a record, report, statement, or data compilation in any form was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

Rule 902 - Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following: 1) Domestic public records under

seal. A document bearing a seal purporting to be that of the United States...or of a political subdivision department, officer or agency thereof, and a signature purporting to be an attestation or execution. 4) Applies to certified copies of public records.

F.R.C.P. Rule 44(a) - Authentication - 1) Domestic. An official record kept within the United States, ...when admissible for any purpose may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record.... The certificate may be made...or may be made by any public officer having a seal of office and having official duties...in which the record is kept authenticated by the seal of the officer's office.

10 (d) "The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth

in subsection (a) of this section." Title of interest now is 5 U.S.C. 901(a), "The Congress declares that it is the policy of the United States to promote the better execution of the laws...."

11 706 - To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the courts shall review the whole record or those parts of it cited by a part, and due account shall be taken of the rule of prejudicial error.

12 (B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has

jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section and the burden is on the agency to sustain its action.

13 Access to records (i) the applicant will be assured access to all official recordes that are necessary to an adequte presentation of his case consistent with regulations governing privileged or classified material. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Army as he desires to present in support of his case.

14 Legendary brigand said to be the son of

Poseidon who lived between Athens and Eleusis. He ensnared strangers with hospitality, then seized them and fastened them into a bed which he then made fit, cutting short their limbs if they were too long for it or racking them if they were too short. Theseus applied the same treatment to Procrostes and cut off his head. [Oxford Companion to Classical Literature, p. 464. Ed. M. C. Howatson, New Edition, 1989]

General Docket - Court of Claims

Case No. 427-80C

EDWARD D. COWHIG

vs.

THE UNITED STATES

Service Pay - Army

Attorneys

For PLF:

Reverend Edward D. Cowhig

245 Cardinal Cushing Highway

Greenbush MA 02040

Pro se

For U. S.:

Alexander Younger

Petition Filed Aug 12 80

5 Copies of Petition to Defendant

Amount Claimed: Not Stated

Plaintiff's Address: See Above

General Docket

Case No. 427-80C

Date	Proceedings
Aug 12 1980	Filing fee of $10 paid by plaintiff.
Sep 3 1980	Notice of reference to Trial Judge C. Murray Bernhardt filed. Copy to parties.
Oct 14 1980	Defendant's answer filed. Copies (5) to atty.
Nov 24 1980	Defendant's motion to dismiss or, in the alternative, for summary judgment filed. Copies (5) to atty.
Nov 24 1980	Administrative Record (in one volume) filed.
Nov 24 1980	Defendant's motion to waive reproduction of the administrative record filed. Copies (2) to atty. ALLOWED DEC 10 1980.
Jan 12 1981	Submitted to the court on defendant's motion to dismiss or,

in the alternative, for summary judgment.

Feb 27 1981 Court filed order dismissing plaintiff's petition. Copy to parties.

Mar 6 1981 Plaintiff's motion to revoke order of dismissal and permit hearing on defendant's motion to dismiss and for summary judgment filed. Copy to deft. SEE COURT ORDER OF APR 3 1981.

Mar 16 1981 Defendant's response to plaintiff's motion to revoke order of dismissal and permit hearing on defendant's motion for summary judgment filed. Copies (2) to atty.

Apr 3 1981 Court entered order denying plaintiff's motion of March 6, 1981. Copy to parties.

IN THE UNITED STATES COURT OF CLAIMS

NO. 427-80C

Edward D. Cowhig

v.

The United States

Edward D. Cowhig, Pro se

Alexander Younger, with whom was Acting Assistant Attorney General Thomas S. Martin, for defendant.

Before NICHOLS, Judge, Presiding, BENNETT and SMITH, Judges.

ORDER

This action is before the court on defendant's motion to dismiss on the ground that plaintiff's claim is barred by the statute of limitations or in the alternative for summary

judgment on the ground that there is no genuine issue as to any material fact. Plaintiff has not responded to this motion.

Plaintiff, Edward D. Cowhig, is a Roman Catholic priest. He was discharged from the Army Chaplain Corps on January 22, 1962, following his voluntary resignation. He now seeks to have that discharge declared null and void and requests that this court remand the action to the Army Board for the Correction of Military Records and direct the board to expunge his records. Plaintiff also seeks money damage sin an unspecified amount.

All claims brought against the United States must be commenced within six years after the right of action first occurs or they are barred. 28 U.S.C. 2401(a) (1976). A claim for active duty pay accrues upon the discharge of the member form the service. Since this action was not brought until 18 1/2 years after discharge and the right of action occurred, it is barred by the

statute of limitations. We need not address other defenses caused by the government or the merits of the cause of action.

IT IS THEREFORE ORDERED, that defendant's motion to dismiss be and the same is granted, plaintiff's petition is dismissed.

BY THE COURT ,

(SIGNED)

PHILIP NICHOLS, JR.

JUDGE

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101 1 81/1616 6 25 81 2 890 1

JUDGE NO COUNTY DOCKET YR/NO

0110 25023 81 1616-C

PLAINTIFFS

EDWARD D. COWHIG

DEFENDANTS

JOHN O. MARSH

SECRETARY OF THE ARMY

CAUSE

(CITE THE US CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

OTHER - 28 USC 1361 - Plaintiff seeks order compelling Secretary of the Army to order hearing before the Army Board for Correction of Military Records.

ATTORNEYS

Alexander F. X. Matulewicz, esq.

Six Beacon St.

Boston MA 02108

742-6677

AUSA GREG FLYNN

CA 81-1616-C

NR. PROCEEDINGS

01 Complaint, FILED. Summons issued.

02 Deft.'s motion to dismiss, FILED. Memorandum of points and authorities in support of same attached and FILED. cs.

03 Pltff.'s motion for enlargement of time to file memorandum in opposition to deft.'s motion to dismiss, FILED. cs.

CAFFREY, CH. J., re: #3 MOTION ALLOWED. TIME EXTENDED TO 10-23-81. cc/cl.

04 Pltff.'s motion for enlargement of time to file memorandum in opposition to deft.'s motion to dismiss, FILED.

CAFFREY, CH. J., re: #4 MOTION ALLOWED. TIME EXTENDED TO 10-26-81. cc/cl.

05 Pltff.'s reply to deft.'s motion to dismiss, and memorandum in support of same attached and FILED.

CAFFREY, CH. J., re: Case called for hearing on deft.'s motion to dismiss;

arguments; motion taken under advisement.

06 CAFFREY, CH. J., MEMORANDUM AND ORDER ENTERED...1) Deft.'s motion to dismiss is allowed. 2) Complaint dismissed; judgment for the deft. cc/cl, BNA, NCAI, CCH, MLW & MS.

07 Notice of appeal filed. c/s FF Pd.

Certified copy of docket & Original pleadings forwarded to court of appeals.

08 Opinion received from the Court of Appeals entered...affirmed.

Mandate received from the Court of Appeals entered...affirmed.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG

PLAINTIFF CIVIL ACTION NO. 81-1616-C

V.

JOHN O. MARSH,

SECRETARY OF THE ARMY

Defendant

MEMORANDUM

March 31, 1982

CAFREY, Ch.J.

This is a civil action, in the nature of mandamus, in which the plaintiff, Edward D. Cowhig, asks the Court fo compel "an officer or employee of the United States...to perform a duty owed...." 28 U.S.C. 1361. Specifically, the plaintiff requests that this Court order the Army Board for the Correction of Military Records (ABCMR) to hold an evidentiary hearing to determine whether or not the plaintiff's discharge from active duty was improper and

should be declared null and void. The plaintiff seeks a further order enjoining the ABCMR's consideration of evidence of his hospitalizations in 1960 and 1961 during such hearing. The defendant has moved to dismiss the action on the grounds that the plaintiff's claim is barred by the doctrine of res judicata, the statute of limitations and the doctrine of laches. After hearing, I rule as follows.

In 1960, the plaintiff was a chaplain in the United States Army stationed in Okinawa. It is undisputed that prior to 1960, the plaintiff had maintained an exemplary service record. During 1960 and 1961, the plaintiff was hospitalized on four separate occasions for treatment of alcoholism. the plaintiff's final officer efficiency report, dated October 7, 1961, stated that he was an outstanding officer whose performance had fallen below acceptable standards due to alcohol abuse. On November 7, 1961, the plaintiff tendered his unqualified resignation

from active duty. The resignation was accepted on January 28, 1962, and the plaintiff received an honorable, voluntary discharge.

In 1974, the plaintiff petitioned the ABCMR for a change in his discharge status. The Board held a lengthy hearing at which the plaintiff testified. After hearing and after examination of all the pertinent documents, the ABCMR found that the plaintiff's separation from the Army with an honorable discharge was in accordance with the regulations in effect in 1962. The Board also found, however, that the plaintiff had resigned under duress since his ecclesiastical endorsement had been withdrawn. Consequently, the Board ordered that the plaintiff's records be corrected to show that his honorable discharge was involuntary.

On April 13, 1977, the ABCMR agreed to review an application by the plaintiff that it reconsider the 1974 decision and declare that his release from active duty in 1962 was null and

void. The Board considered the entire administrative record and denied the plaintiff's request without a hearing, stating that the plaintiff had failed to show "probable material error or injustice." On September 24, 1979, for a third time, the ABCMR agreed to review the 1962 discharge. The Board reached the same conclusion as it had in 1977 and dismissed the plaintiff's claim without a hearing on March 26, 1980. Thereafter, the ABCMR received several inquiries from members of congress and once again agreed to consider the plaintiff's request for relief. the Board re0examined the administrative record and additional evidence presented by the plaintiff. On September 10, 1980, after extensive analysis of all the evidence before it, the Board once again dismissed the plaintiff's claim without a hearing.

While his last petition was pending before the ABCMR, the plaintiff filed suit against the United States in the Court of Claims. The

plaintiff sought to have his discharge declared null and void and to obtain unspecified money damages. On February 27, 1981, the Court of Claims allowed the defendant's motion to dismiss the plaintiff's petition. The Court of Claims ruled that the cause of action had accrued in 1962 when the plaintiff was discharged from active duty and that consequently, the six-year statute of limitations barred the plaintiff's claim.

On June 25, 1981 the plaintiff commenced the present action against the Secretary of Army as the person authorized to order the correction of military records through the ABCMR. See 10 U.S.C. 1552(a).

Asserting that the Court of Claims decision involved the issue of whether the ABCMR "abused its discretion" by refusing to declare the plaintiff's discharge null and void, the defendant argues that the instant action presents

the identical issue and is, therefore, barred by the doctrine of res judicata. I agree.

A judicially created doctrine, res judicata makes a final, valid judgment binding and conclusive on the parties with respect to "all matters, fact and law, that were or would have been adjudicated in the proceedings." 1B Moore's Fed. Prac. 0..405(1) (1974) at 624. See e.g. Lawlor v. vational Screen Service Corp., 349 U.S. 322 (1955). A party asserting res judicata must prove that the parties are the same, that the earlier judgment was final, and that the cause of action resolved by a final judgment was the same as that presently asserted. See e.g. Missour-Kansas Pipe Line Co. v. United States, 312 U.S. 502 (1946).

I rule that the defendant has done so here and that the doctrine of res judicata bars the present action. First the defendant has shown the required identity of parties between the prior action and the present action. The fact

that the plaintiff nominally has brought the present action against the Secretary of the Army does not disguise the reality that he still is pursuing a claim against the United States. A suit brought against "an officer of the United States is a suit against the United States itself." Hawaii v. Gordon, 373 U.S. 57 (1973). Second, the Court of Claims clearly entered a final judgment when it ruled that the statue of limitations barred the plaintiff's claim. Finally, the plaintiff seeks the same ultimate relief as he sought in the Court of Claims and his contention that he seeks only a hearing before the ABCMR simply exalts form over substance.

Plaintiff seeks a hearing before the ABCMR only in the hope that it will culminate in an order that plaintiff recover back pay previously denied as a result of several earlier administrative and Court of Claims rulings. The real purpose of this present case is to

ultimately gain the previously denied back pay. As was stated in Mathis v. Laird, 324 F. Supp. 885 (M.D. Fla, 1971):

> Plaintiff had his day in court. He brought this same claim before the Court of Claims which after consideration dismissed it on the ground that it was barred by the statute of limitations. Plaintiff cannot now file a new suit in a different court...and relitigate his claim.

Id. at 888; see also Boruski v. United States, 70 F.R.D. 553 (D. Mass., 1976) (present action an effort to relitigate earlier claim; barred by res judicata).

Therefore, I rule that the doctrine of res judicata bars plaintiff's claim and that the defendant's motion to dismiss should be allowed.

Order accordingly.

Signed: Andrew A. Caffrey, Ch.J.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG, JR.

Plaintiff,

v. CIVIL ACTION

NO. 81-1616-C

JOHN O. MARSH, SECRETARY OF THE ARMY

Defendant

ORDER

March 31, 1982

CAFFREY, Ch. J.

In accordance with memorandum filed this date, it is ORDERED:

1. Defendant's motion to dismiss is allowed.

2. Complain dismissed; judgment for the defendant.

Signed: Andrew A. Caffrey, Ch.J.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 82-1352

TITLE OF CASE

EDWARD D. COWHIG

Plaintiff, Appellant,

v.

JOHN O. MARSH,

SECRETARY OF THE ARMY,

Defendant, Appellee.

ATTORNEYS FOR APPELLANT

Edward D. Cowhig, Pro se

245 Chief Justice Cushing Hwy.

Greenbush MA 02040

545-4330

ATTORNEYS FOR APPELLEE

Gregory C. Flynn, Esquire

1107 P.O. & Courthouse

Boston MA 02109

223-1755

No. Below: C.A. 81-01616

Judge Below: Caffrey, J.

Date of Order: March 31, 1982

Notice of Appeal Filed: April 14, 1982

(request for hearing)

Fees paid

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

CASE NO: 82-1352 EDWARD D. COWHIG V. JOHN O. MARSH, SECRETARY OF THE ARMY.

DATE	FILINGS-PROCEEDINGS
1982	
April 20	Copy of notice of appeal and district court docket entries received and filed and case docketed. Notices mailed. (cb)
Apr. 23	Record on appeal consisting of one volume received and filed. Notices mailed. (lb)
Apr. 23	Appearance of Gregory C. Flynn, Esquire for appellee received and filed. (lb)

Apr. 28 Appearance of Edward D. Cowhig, Pro se for appellant received and filed. (lb)

May 3 Statement of issues received and filed. (lb)

May 26 Motions filed. Order (Campbell, J.) granting leave to the parties to refer to the original record without reproduction in appendix form and enlarging the time for filing the brief for appellant to June 10, 1982. Notices mailed. (cb)

June 10 Brief for appellant received and filed. Notices mailed. (lb)

June 16 Request for oral argument received and filed. (lb)

July 1 Brief for appellee received and filed. (lb)

July 29 Order (Campbell, J.) granting appellant's request for oral argument. Notices mailed.

Aug. 23 Assigned for hearing at the September, 1982, session. Notices mailed. (cb)

Sept. 17 Heard by Davis, Campbell and Breyer, JJ. (as)

Nov. 22 JUDGMENT: The judgment of the district court is affirmed. Opinion of the court by Davis, J. Notices mailed. (lb)

Dec. 6 Petition for rehearing and rehearing en Banc, received and filed. (as)

Dec. 17 ORDER: (Coffin, Ch.J., Davis, Campbell, Bownes and Breyer, JJ) denying the petition for rehearing and rehearing en banc. Notices mailed.

Dec. 28 Taxation of costs filed. Mandate issued, copy file and original papers to follow. Notices mailed. (lb)

1983

Jan. 14 Original papers returned to the district court. (lb)

Mar. 21 Petition for certiorari filed Supreme

Court (No. 82-6395) March 16, 1983.
(ar)

Apr. 21 Order of Supreme Court denying certiorari (#82-6395) April 18, 1983.

UNITED STATES COURT OF APPEALS

For the First Circuit

No. 82-1352

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

JOHN O. MARSH,

SECRETARY OF THE ARMY,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES

DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Andrew A. Caffrey,

U.S. District Judge]

Before

Davis*, Campbell and Breyer

Circuit Judges.

Edward D. Cowhig, pro se

Gregory C. Flynn, Assistant United States Attorney, with whom William F. Weld, United States Attorney, was on brief, for appellee.

November 22, 1982

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*Of the Federal Circuit, sitting by designation.

DAVIS, Circuit Judge. Appellant Edward D. Cowhig, Jr. (Father Cowhig), then a Catholic chaplain with the Regular Army, resigned from the Army in January 1962 with an honorable discharge. In 1981, he brought this civil suit in the District Court for Massachusetts to direct the Army Board for the Correction of Military Records (Correction Board) to determine whether his discharge from active duty was improper, and whether he should be reinstated on active duty. Chief Judge Caffrey (on March 31, 1982) dismissed the action on the ground that it was barred by res judicata. This appeal followed.

The procedural history of Father Cowhig's claim shows that, while stationed in Okinawa in 1960-61, he had some difficulties with alcohol, and on November 7, 1961, he tendered his resignation which was accepted on January 28, 1962. His claim has been that this resignation was not voluntary but was induced by mistaken action of ecclesiastical authorities attributable

to erroneous and perhaps fraudulent information supplied by the Army personnel. Thereafter he made numerous informal attempts to return to active duty. In July 1973 he asked the Correction Board to correct his records to show that his release from active duty was not voluntary but involuntary. This was done in 1974. The next year (1975) he again applied to the Correction Board, seeking to have his release nullified and that he be returned to active duty. In June 1977 this request was denied. Father Cowhig again (in September 1979) sought relief from the Correction Board which denied it in March 1980 and once more in September 1980. Plaintiff brought suit in the Court of Claims which held (in February 1981) that his claim, having been brought more than eighteen years after his discharge in 1962, was barred by the six-year period of limitations applicable to the Court of Claims (25 U.S.C. 250) because the time began to run from the date of his 1962

separation. Cowhig v. United States, Ct. Cl. No. 427-80C (reconsideration denied, April 3, 1981). The present district court suit was then filed on June 25, 1981.

We hold that, from whatever viewpoint we can appropriately approach this case, the district court was right in dismissing the action. On one view, the six-year limitations statute on district court suits against the United states (see 28 U.S.C. 2401, the district court analogue of 25 U.S.C. 2501, supra) and the decision of the Court of Claims both apply directly to this case because it is in effect an attempt to obtain the monetary relief of back-pay from the United States--a claim which had already been explicitly determined to be precluded by limitations. The district court below so held.

If, however, we accept Father Cowhig's belated disavowal of monetary relief (see note 1, supra) and assume that he seeks no more than the prospective affirmative relief of restoration to active duty, we reach the same result. It may be (we do not decide) that 28 U.S.C. ss 2401, which is not in terms restricted to monetary claims, likewise bars, in itself, this type of

action asking affirmative relief which would inevitably lead to the payment of federal money, if only prospectively.

But even if ss 2401 is not directly applicable, this action would be precluded by the doctrine of laches. At the least, the decision of the Court of Claims shows that plaintiff's basic claim first accrued in 1962 when he was discharged, not when the Correction Board later acted on his requests. Over eighteen years elapsed before he sued in the district court. Pursuit of permissive administrative remedies, whether before the Correction Board or through Congressional intervention, did not necessarily toll the running of either laches or limitations.[3] Here, plaintiff's court of pursuing relief from the other tribunals, before he sued in the district court, does not show that his delay in filing suit below was a diligent or reasonable postponement. He did not even petition the Correction Board until 1973 (eleven

years after his discharge), and his successive but fruitless petitions thereafter did nothing to enhance his diligence. Nothing in the Board's determinations warranted him in delaying this suit; the partial relief granted by the first Board ruling was all that he requested and the later decisions were wholly adverse. It appears, rather, that he continued with unsuccessful petitions to the Board, then jumped from that tribunal to another, and then still another, all the while simply seeking a renewed chance to win his case on the merits.

On the other hand, the Government has undoubtedly been prejudiced. Memories of the events of 1960-61 have faded in these 18 plus years, and some personnel may no longer be available. See Deering v. United States, 620 F.2d 242, 246, 223 Ct. Cl. 342, 350 (1980). This is especially important in this case in which Father Cowhig places much of his reliance on a challenge to the authenticity of a letter from a

high-ranking Army officer shortly prior to plaintiff's discharge, and also asserts that the statements in that letter were factually false.

Even were we to view Father Cowhig's claim in the most favorable legal light we can imagine--namely as seeking simple court review of a recent agency decision not to reopen--these facts are sufficient to show that the decision was reasonable and hence lawful.

The short of it is that, on any view we can properly take, appellant's suit in the district court was either barred by a prior judicial decision or was too late.

Affirmed

No. 82-1352

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

JOHN O. MARSH, SECRETARY OF THE ARMY,

Defendant, Appellee.

JUDGMENT

Entered: November 22, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

82-1352

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

JOHN O. MARSH, SECRETARY OF THE ARMY

Defendant, Appellee.

Before Coffin, Chief Judge, *Judge Davis and Campbell, Bownes and Breyer, Circuit Judges.

ORDER OF COURT

Entered: December 17, 1982

Upon consideration of appellant's ``Petition for Rehearing and Rehearing En Banc'',

It is ordered that said petition be; and the same hereby is, denied.

By the Court:

Clerk.

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*Of the Federal Circuit,

sitting by designation.

PROCEEDINGS

IN THE CASE OF:

COWHIG, EDWARD D.

016-14-7279

DATE: 21 & 26 September 1983

DOCKET NUMBER: AC77-01666G

INDEX NUMBER: 111.01, 134.01

I certify that hereinafter is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in the case of the above-named individual. A quorum was present during the hearing and deliberation. The following findings, conclusions and recommendations were adopted by the Board.

Applicant requests correction of military records as stated in application to the Board and restated herein.

The Board convened at the call of the Chairman on the above date and, following consideration of the the case and having made its determination

thereof, proceeded to other business.

Present:

Mr. Joseph P. Murphy; Chairman

Mr Adrian U. Dubuisson; Member

Mr. William D. Masters, Jr.; Member

Mr. Philip E. Lavigne; Member

Mr. Jack E. Hobbs; Member

Mr. George Sowa; Executive Secretary (Acting)

Mr. Loren G. Harrell; Examiner

Applicant did appear before the Board. He was represented by counsel.

The Board considered the following evidence:

Exhibit A Application for correction of military records.

Exhibit B Military Personnel Records

Exhibit C Case Summary

Exhibit D Transcript of Hearing with applicant's exhibits.

The Board finds:

1. That the application was timely filed or the Board has found it to be in the interest of

justice to excuse failure to timely file; that the applicant has exhausted all administrative remedies afforded by existing law or regulations.

2. That it incorporates in these proceedings and adopts by reference thereto so much of the Exhibits above, as pertains to the factual showing of the Department of the Army records which generally reflect:

a. that the applicant requests, as amended by counsel during the course of the hearing, his records be corrected by:

(1) voiding of his discharge from the United States Army on 23 January 1962;

(2) correction of his records, and any other system(s) of departmental records, to show his retroactive restoration to active duty in a commissioned status, effective 23 January 1962;

(3) correction of his records, and any other system(s) of departmental records, to show that he has served continuously on active duty in a commissioned status since 23 January 1962 or, in

the alternative, that he served on active duty in a commissioned status from 23 January 1962 until 2 January 1971, or such other date as may be deemed necessary and/or appropriate, at which time applicant was retired by reason of years of service under the provisions of 10 U.S.C. Section 3911;

(4) voiding and expunging from his records, of any and all other system(s) of departmental records, of any and all documentation/information relating to the resignation submitted by him on 7 November 1961;

(5) voiding and expunging from his records an officer efficiency report for the period 13 July to 1 October 1961; and

(6) such other and/or further relief as may be deemed necessary and/or appropriate in order to accord him full and complete relief;

b. that the applicant states that he was requesting reconsideration of his petition to this Board in the interests of justice and

equity; that as he claimed in 1973, he was again claiming that his resignation from the Regular Army in 1961 was forced and hence invalid, null and void and should be so declared; that his reputation had been damaged and his character defamed by false reports; that to what extent that could be redressed and repaired, he was uncertain; that he was asking only what was feasible; that his own personal opinion was that it could be somewhat restored, if he were permitted to reenter active service, even at his present age; that he feels that he was ready and willing to resume duty even with the paratroopers; and that he was aware of administrative obstacles to that desire, but the about 240 priest shortage of Catholic Chaplains in the Army could alleviate that difficulty;

c. that the applicant, who was born on 28 March 1919, was appointed as a first lieutenant, United States Army Reserve, on 16 November 1950 and ordered to active duty on 2 January 1951;

that he was promoted to the grade of captain, Army of the United States, on 25 June 1954; that he was appointed as a captain, Regular Army, effective 2 January 1955; that he had an overall Efficiency Index of 135 as of 1961; that he had been awarded the Army Commendation Medal, the Master Parachutist Badge, the Korean Service Medal, the National Defense Service Medal, and the United Nations Service Medal; that he had served overseas in Korea, Germany and Okinawa; that he was selected for promotion to the grade of major by the 1961 promotion selection board; and that on 23 January 1962, he was honorably discharged, based on his voluntary resignation, in the grade of captain, with over 11 years creditable service;

d. that, upon the applicant's medical evacuation from Okinawa, an officer efficiency report was rendered covering the period 13 July to 1 October 1961, wherein he received an overall numerical rating of 144.8 out of a possible 240;

that the rater stated, in fact, under remarks that the applicant had recently suffered from a nervous condition which had prevented him from reporting for duty at the appointed time; that the indorsed stated, in fact, that the applicant's performance of duty as a chaplain would be outstanding except for the fact that at various times he had required treatment caused by hypertension and nervousness involving alcoholism; that on three separate occasions during the past year, he had been admitted to the hospital suffering from despondency and anxiety associated with alcoholism, that on at least one other occasion, his medical officer treated the applicant in his quarters for the same symptoms; that since his last efficiency report, the applicant, after consulting with the Chief of Neuropsychiatric service, agreed to enter into the group therapy sessions at the hospital and to join Alcoholics Anonymous; that according to the doctor, the applicant half-heartedly accepted the

treatment at the hospital and several times, he either failed to be present or was late for scheduled conferences of the group therapy; that subsequent to these failings, the applicant lapsed into an extreme period of anxiety and once again proved his inability to control himself resulting in his third medical evacuation to the hospital; that in spite of these periods of unreliability, the applicant had done extremely well in attaining his religious objectives with the troops; that he had been a definite asset to the combat team; and that he did have a deficiency which marred his otherwise fine record and did tend to negate his fine accomplishments;

e. that on 15 October 1974, the Under Secretary of the Army approved the Board's findings, conclusions and recommendation of 14 August 1974 that the applicant's military records be corrected to show that he was involuntarily released from active duty under the provisions of Title 10 U.S.C. 3785, on 23 January 1962; and

f. that on 13 April 1977, 26 March 1980 and 10 September 1980, respectively, the Board denied the applicant's requests to have his military records corrected to show that his release from active duty on 23 January 1962 was null and void.

THE BOARD CONCLUDES

1. That based on the medical evidence of record, and the sworn testimony, in behalf of the applicant, by a civilian psychiatrist, the Board is of the opinion that the applicant was not an alcoholic, but abused alcohol for self-medication treatment of an underlying anxiety reaction.

2. That in conjunction with the foregoing the Board is also of the opinion that, had the applicant been properly diagnosed, in 1960 or 1961, by a qualified psychiatrist, his condition could have been treated and he would have responded to such treatment.

3. That, had the applicant been afforded this treatment, he would have been fully rehabilitated and restored to duty.

4. That, upon restoration to duty, it is reasonable to presume that he would have been promoted to the grade of major and continued to perform his assigned duties in a satisfactory manner until he completed 20 years of active service for retirement purposes.

5. That although a conspiracy against the applicant was not conclusively proved at the hearings, sufficient evidence was adduced to create the appearance of such a conspiracy and that conspiracy ultimately led to the ill-advised, and literally forced and truly unvoluntary resignation of the applicant from the service.

6. That through an unfortunate combination of circumstances, the actions of his religious superiors effectively precluded the applicant from seeking any meaningful source of recourse.

7. That in view of the foregoing findings and conclusions, the Department's acceptance of the applicant's resignation, without affording him

proper treatment and the opportunity to be rehabilitated, has deprived him of promotion to the grade of major and 20-year retirement benefits, and therefore, is unjust.

THE BOARD RECOMMENDS

1. That all of the Department of the Army records of EDWARD D. COWHIG be corrected to show:

a. that his resignation from the service and honorable discharge on 23 January 1962 are void and of no force or effect;

b. that he was promoted to the grade of major, Army of the United States, effective on the date he would have been promoted as recommended by the 1961, Major, Army of the United States, Promotion Selection Board;

c. that he remained on active duty until such time as he completed 20 years of active service for retirement purposes; and

d. that, upon completion of 20 years active service and his written application, he was retired for length of service in the grade on

major.

2. That so much of the application for correction of military records which is in excess of the foregoing be denied.

(signed)

JOSEPH P. MURPHY, Chairman

(signed)

ADRIAN U. DUBUISSON, Member

(signed)

PHILIP E. LAVIGNE, Member

DISSENT

A minority, Messrs. Hobbs and Masters, dissent from so much of the foregoing conclusions and recommendation, as pertains to the applicant's promotion, restoration to active duty and retirement, and recommend that his application be denied in its entirety for the following reasons:

a. that in view of the numerous conflicts between previous testimony and that now given concerning the applicant's alcoholism and severe drinking problem, they are of the opinion that, due to passage of time, the current testimony lacks sufficient credibility to support the contention that he was neither an alcoholic nor

had a severe drinking problem which affected his duty performance;

b. that the applicant was an alcoholic and had a severe drinking problem at the time of his resignation from the Army; that this was fully supported by the applicant's own sworn testimony before this Board in 1974 wherein he testified, in effect, that, while stationed in Okinawa, he abused alcohol; that it got the best of him and he got dependent on it; and that he was an "alky";

c. that the applicant's abuse of alcohol was affecting his performance of duty and tarnished his image as an officer and Army Chaplain; that this was fully supported by his many hospitalizations for alcoholism and alcohol related problems; that medical summaries describe his treatment for alcoholism, including a statement that on one occasion he failed to go to work for four days because of being incapacitated

due to abuse of alcohol; and that his drinking problem was made a matter of record in an officer efficiency report and his sworn testimony, in 1974, that he heard through the "grapevine" that he was an "awful drunk";

d. that the applicant was not a good candidate for treatment and further rehabilitation efforts for his alcoholism at the time of his discharge; that this was based on the fact that the applicant had been an Alcoholics Anonymous failure and stopped attending Alcoholics Anonymous while stationed in Okinawa; that the applicant testified that he had gone to Alcoholics anonymous meetings, read their literature, talked to their guys, and alcohol was still a mystery; that nobody forced him to drink; that he drank by himself; that for him to have sought psychiatric care would have, at least subconsciously, been inconsistent with his position; and that this would, in effect, have been an admission on his part that the Army was

right and he was wrong;

e. that the applicant did receive proper medical treatment and psychiatric evaluation while on active duty; that this was evidenced by his many hospitalizations for alcoholism and drinking related problems; and that he failed to heed their advice and continued drinking even after being discharged from the Army;

f. that having thoroughly considered the testimony of the civilian psychiatrist specifically employed by the applicant for the limited purpose of testifying before this Board, the minority rejects same for the following reasons; first, the passage of time has significantly changed the testimony of the applicant as is evidenced by the fact that his testimony at his latest hearing is contradicted by the sworn testimony at his former hearing some 10 years ago; that inasmuch as all evidence indicates that Dr. Roark was employed by the applicant and recently interviewed the applicant

solely preparatory to his testimony here and not a part of ongoing analysis or therapy, it is logical to presume that the applicant would relate his current story, which is much more favorable than that related at his hearing in 1974 or at his release in 1962; that being the case, it is logical to presume that his medical opinion is not based on the facts as they existed at the time of his discharge; furthermore, there is no reason to reject the medical evidence of record, the same evidence that the applicant agreed with in 1974, which was created concomitant with the activities and direct observation of the applicant at the time of treatment prior to discharge; it is concluded that this evidence is more probative that that of the testimony of the applicant's psychiatrist which was developed some 20 years after the fact and based on somewhat questionable facts;

g. that they firmly believe that had the applicant not tendered his resignation, he would

have been involuntarily separated from the service in a very short period of time due to alcoholism; that this was based on the fact that the applicant would not have sought psychiatric help, that he would have continued to abuse alcohol as evidenced by his numerous episodes of drinking after discharge, civilian hospitalizations, and the loss of a church parish due to his abuse of alcohol; and

h. that notwithstanding the foregoing, the Military Ordinate of the Catholic Church directed the applicant to either tender his resignation or lose his ecclesiastical endorsement; that he could not function as a military chaplain and remain on active duty without this endorsement; and that, accordingly, they are of the opinion that there is no basis on which to correct his records as requested.

s/WILLIAM D. MASTERS, JR., Member

s/JACK E. HOBBS, Member

DEPARTMENT OF THE ARMY

OFFICE, ASSISTANT SECRETARY

WASHINGTON, D.C. 20310

MEMORANDUM

28 Mar 84

MEMORANDUM FOR MR. CLARK

SUBJECT: Cowhig, Edward D., 016-14-7279

PURPOSE: To obtain the signature of the PDASA.

DISCUSSION: The memoranda at the tabs implements your instructions to me regarding Father Cowhig's petition to the ABCMR.

RECOMMENDATION: Please sign the memoranda at the tabs and return to me for dispatch.

(signed)

John W. Matthews

Acting Deputy Assistant Secretary

(DA Rev Board Personnel Security)

Attachments

29 March 1984

MEMORANDUM FOR EXECUTIVE SECRETARY, ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

SUBJECT: COWHIG, EDWARD D., 016-14-7279

I have reviewed and considered the report of proceedings, the case summary, military and medical records, and the transcript of the hearing held on 21 and 26 September 1983, concerning Edward D. Cowhig.

You will recall that it was I who directed that a second formal hearing be afforded Father Cowhig so that he could personally appear again and present whatever new evidence he had to offer.

Based upon my review of this second hearing, it is my determination that no error or injustice exists. While the majority of the Board concluded that the applicant was not an alcoholic; that he was not properly diagnosed and treated by a qualified psychiatrist for an underlying anxiety reaction; and that, had he

been properly diagnosed and afforded treatment, he would have been fully rehabilitated and restored to duty, I am not persuaded that this was the case. My review of the facts and circumstances surrounding the applicant's case reveals that: (a) by his sworn testimony in 1974, he admits to being an alcoholic and dependent on alcohol while stationed in Okinawa; (b) he was not a good candidate for rehabilitation and restoration to duty; (c) he was properly treated by both qualified medical doctors and psychiatrists, but continued to drink excessively; (d) he made little or no attempt to participate in an alcoholics anonymous program and he could not accept psychiatric care; and (e) he continued to abuse alcohol after his discharge from the service, to a degree which caused him to lose his church parish and to be hospitalized on many occasion for alcohol abuse.

Contrary to the majority's opinion, I find no conspiracy, on the part of the Army, in the

applicant's resignation. The applicant's resignation was tendered as a result of the edict of the military ordinate of the Catholic church, which stated that he either resign from the Army or lose his ecclesiastical endorsement. That edict was based solely on his excessive abuse of alcohol, which was affecting his performance of duty as an Army chaplain and sullying his reputation as a chaplain and as a priest.

In support of my determination, I concur with and adopt the rationale submitted by the minority. A memorandum for The Adjutant General, indicating that the application has been denied, has been signed and is attached.

(signed)

William D. Clark

Principal Deputy Assistant Secretary

(Manpower and Reserve Affairs)

Attachment

DEPARTMENT OF THE ARMY

OFFICE, ASSISTANT SECRETARY

WASHINGTON, D.C. 20310

29 March 1984

SFMR

MEMORANDUM FOR THE ADJUTANT GENERAL

SUBJECT: COWHIG, EDWARD D., 016-14-7279

Having considered the findings, conclusions and recommendation of the Army Board for Correction of Military Records, and under the provisions of 10 U.S.C. 1552, it is directed:

That in the case of EDWARD D. COWHIG, his application for correction of military records be, and hereby is, denied.

(signed)

William D. Clark

Principal Deputy Assistant Secretary

(Manpower and Reserve Affairs)

DIST OFF DOCKET YR/NO. FILING DATE J N/S 0

101 1 86/2192 07 24 86 2 890 1

JUDGE NO. COUNTY JURY DEM DOCKET YR/NO.

0122 25025 P 86/2192-Y

PLAINTIFFS

EDWARD D. COWHIG

DEFENDANTS

JOHN O. MARSH,

Secy of the Army

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

10 U.S.C. 3781-86; 10 U.S.C. 1552; Lack of due process- U.S. Army

ATTORNEYS

Edward D. Cowhig, pro se

245 C.J. Cushing Way

Greenbush, MA 02040-0154

(617)545-4330

AUSA Gelhaar

NR. PROCEEDINGS

1 Complaint, filed, S/I, LR10/I, fee paid

2 Return of summons wso Wm. Weld, Attorney for US, dtd 7/24/86, filed

3 Return on Service wso 13 AUG 86, Filed.

4 Deft mtn to extend time, filed, c/s.

5 Pltf's opposition to Deft mtn to extend time, filed.

6 Pltf's mtn for Entry of Default, filed.

7 Pltf's mtn for Judgment by Default, filed.

8 Affidavit in support of #6, filed.

9 Deft opposition to pltfs mtn for entry of default and for judgment by default, filed, c/s.

10 Deft mtn to dismiss, or, in the alternative, mtn for S/J, filed, c/s.

YOUNG, DJ: Re: #4, Mtn ALLOWED,cc/cl

11 Copies of papers served upon US Atty on 9-23-86, filed.

12 Pltf's opposition to deft mtn to dismiss, or in the alternative, mtn for S/J, filed, c/s.

13 Affidavit of Edward Cowhig, filed, c/s.

YOUNG, DJ: The within mtn (#10) is set for hearing on Nov 12, 1986 at 2 pm, KH, cc/cl

14 **YOUNG, DJ:** MOTION SESSION: Deft's mtn to dismiss; or for S/J. Insofar as this axn depends upon the actions of the Board for corrections of military records it is not precluded. Activities that are prior to that board's actions are precluded. With respect to the 1983 decision of Judge Caffrey, CH.J. the Court takes U/A the issue of whether this case involves a non-reviewable military decision.

15 Pltf's Brief after Oral Argument on mtn to dismiss, filed, c/s.

16 Pltf's Additional Brief after Oral Hearing on Mtn to Dismiss, filed, c/s

17 Pltf's Third Brief on mtn to dismiss, filed, c/s.

18 Pltf's Fourth Brief on mtn to dismiss, filed, c/s

19 Pltf's Fifth Brief on mtn to dismiss, filed, c/s.

20 Pltf's Sixth Brief on mtn to dismiss, filed, c/s.

21 Transcript of hearing on 11-12-86, Filed.

22 **YOUNG, DJ: MEMORANDUM & ORDER CONCERNING SETTLEMENT:** Ptys directed within 30 days of the date of this order to inform Court and each other in writing of willingness to accept settlement proposed (see order). If case settles, fine; the Court will proceed to enter appropriate judgment for neither pty. If not, Court will act promptly to dispose of case on the merits, cc/cl

23 CC of Ltr from Fr. Cowhig to Atty Gelhaar, dated 10-6-87, filed.

24 CC of Ltr to Fr. Cowhig from Mr. Gelhaar re settlement, filed.

25 Pltf's RESPONSE to # 24, filed.

26 CC of Ltr to US Atty from Pltf dated 10-19-87, filed.

YOUNG, DJ: Re #10, Settlement in this case having proved impossible, the Court has thoroughly reviewed the merits and rules as follows: 1) this action is barred by the principles of res judicata. While the present appeal stems from an agency hearing subsequent to the last appeal to this Court, the issue is precisely the same as that earlier presented. 2) In the alternative, the Court rules that the Dept of the Army decisions herein were not arbitrary or capricious. Accordingly this action must be dismissed and judgment must enter for the deft,cc/l

27 **YOUNG,DJ: JUDGMENT:** be and hereby is entered for the deft,cc/l

28 **NOTICE OF APPEAL** filed.

29 Pltf's **MOTION** for reconsideration, filed,c/s.

30 Pltf's **MEMO** in support of #29, filed,c/s.

31 FILING FEE PAID.

32 Pltf's SECOND BRIEF in support of # 29, filed, c/s.

33 Pltf's MOTION for reconsideration or amendment of judgment, filed,c/s

34 Deft's OPPOSITION to mtn for reconsideration, filed,c/s.

YOUNG, DJ: Re: #29, DENIED,c/cl

Certified copy of docket and original pleadings certified this date to Court of Appeals

35 Pltf's MOTION for relief from judgment/vacate, filed,c/s.

YOUNG, DJ: Re: #35, DENIED,c/cl

Pleading #35, forwarded to court of appeals on supp cert.

36 Second Notice of Appeal, filed. (Filing fee pd).

Pleading # 4,5,6,7,8,11,23,36, forwarded to court of appeals on supp cert.

37 Receipt of transcript request from pltf, filed.

38 Pltf's **MOTION** for relief from judgment or independent action for relief, filed,c/s.

YOUNG, DJ: Re: #33, Upon consideration of the merits of this mtn, it is DENIED,cc/cl

YOUNG, DJ: Re: #38, The pltf has appealed to the Court of Appeals for the First Circuit from the judgment he attacked by way of this pleading. That appeal is pending. Accordingly, this Court is presently w/o subject matter jurisdiction to act on this mtn and therefore DENIES it, not on the merits but on jurisdictional grounds,cc/cl

Pleading # 38, forwarded to court of appeals on supp cert.

39 Pltf's **MOTION** for reconsideration/clarification of Court's actions on 12-14-87, filed.

YOUNG, DJ: Re: #39, No action can be taken hereon, the case presently being on appeal,cc/cl

40 Pltf's **NOTICE** of appeal, filed,c/s.

Pleading # 40 forwarded to court of appeals on supp cert.

Pleading # 39, forwarded to court of appeals on supp cert.

41 U.S. COURT OF APPEAL. MANDATE entered: Judgment of the D.C. is AFFIRMED. filed,

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG,

Plaintiff,

v. CIVIL ACTION

NO. 86-2192-Y

JOHN O. MARSH, as he is

Secretary of the Army,

Defendant.

MEMORANDUM AND ORDER CONCERNING SETTLEMENT

YOUNG, D.J. September 28, 1987

After lengthy service as an officer in the Corps of Chaplains of the United States Army, Edward D. Cowhig, a Roman Catholic priest, was, he believed, involuntarily albeit honorably discharged from active duty. Since that time Father Cowhig has pursued with virtual single minded devotion his dream of restoration to active duty as an army officer at his former rank together with all back pay and allowances. He

has diligently engaged in every military-administrative review available within the Department of the Army, has repeatedly brought his perceived plight to the attention of his representatives in Congress, and has twice appealed to this Court. His first appeal having proved fruitless, he sought and obtained further administrative review within the Department of the Army with equally dismal results. It is from this latest administrative set back that he has again appealed to this Court.

This is a case that cries out for an amicable settlement. On the one hand, Father Cowhig's dream of restoration to active duty as an officer in the United States Army is, given the extremely narrow scope of review available in his Court, probably just that--a dream. On the other hand, the military justice system is occasionally arbitrary and, somewhat more infrequently, seriously flawed. A number of its most celebrated decisions have not stood the

judgment of history. Consider, for example, the following four cases chosen virtually at random. 1842--Teen-aged Naval apprentice Philip Spencer (son of the Secretary of War) and two seamen are convicted at a drum head court martial by their mentally unbalanced captain, Commander Alexander Slidell MacKenzie, of conspiring to incite a mutiny and are promptly hanged from the yardarm of the U.S.S. Somers. MacKenzie is subsequently acquitted at a formal court martial of any misconduct, E. Potter ed. The United States and World Sea Power 278 (Prentice Hall Inc. 1955); J. Sweetman, American Naval History 50 (Naval Institute Press 1984); 1861--Brigadier General Charles P. Stone imprisoned without formal charges after the disaster at Ball's Bluff in which Senator (and Colonel) Edward D. Baker had been killed. B. Catton, Mr. Lincoln's Army 73-80 (Doubleday & Company Inc. 1951); 1 S. Foote, The Civil War 104-09 (Random House 1958); 1862--Major General Fitz John Porter is court-martialed,

cashiered, and disgraced as a scapegoat for the incompetence of Major General John Pope[1] at Second Bull Run,[2] B. Catton, Mr. Lincoln's Army at 32-39; 1 S. Foote, The Civil War at 758; 1926--Brigadier General William "Billy" Mitchell, the prophet of American air power, court-martialed and suspended from his rank for five years for accusing the Navy and War Departments of "incompetence, criminal negligence, and almost treasonable administration of the national defense." J. Keegan & A. Wheatcroft, Who's Who in Military History 222-23 (William Morrow & Co. Inc. 1976).

As near as one can glean from Father Cowhig's pro se pleadings, his major complaint stems from his perception that his honor, dedication, and pastoral competence have been impugned by the manner in which he was caused to be separated from his active duty--a step he believes was taken based on wholly unsubstantiated allegations. For its part, the

Army stresses the monetary implications of paying to Father Cowhig the salary which would have been due him had he remained on active duty as well as the impact of the pension benefits which would now be his had he continued to serve on active duty. These circumstances lead the Court to propose the following settlement terms viz: That the Army up-grade Father Cowhig's discharge to the highest grade of honorable discharge from active duty, amending all necessary orders and administrative determinations, such discharge to be effective as of the date of his original separation from active duty. On his part, Father Cowhig would abandon his claim for restoration to active duty status, back pay, and allowances. By way of comparison, this is roughly equivalent to the vindication "with honor" achieved by Major General Fitz John Porter (see above) by Congressional action after a twenty-four year wait. 1 S. Foote, The Civil War at 758.

As the parties appear to have some difficulty negotiating directly, they are each directed, within thirty days of the date of this order, to inform the Court and each other in writing of their willingness to accept this settlement proposed, or something like it. If the case settles, fine; the court will proceed to enter an appropriate judgment for neither party. If not, the Court will act promptly to dispose of the case on the merits.

WILLIAM G. YOUNG

UNITED STATES DISTRICT JUDGE

APPENDIX F—DEFENDANT'S MOTION FOR DISMISSAL WITH HAND WRITTEN ORDER DATED OCTOBER 22, 1987

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 86-2192-Y

EDWARD D. COWHIG.

Plaintiff,

JOHN O. MARSH, Secretary to the Army,

Defendant.

DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Defendant John O. Marsh, as Secretary of the United States Army ("defendant"), moves pursuant to Fed. R. Civ. P. 12(b)(6), that the Court dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted or, in the alternative, that summary judgment enter in defendant's favor. As grounds therefore, defendant states that plaintiff's

claim is barred by the doctrine of res judicata. Moreover, even if plaintiff's claim is not so barred, it results from a decision of the defendant which is a nonreviewable military personnel decision.

Young, D.J.:

10/8/86

The within motion is set for hearing on Nov. 12, 1986 at 2:00 PM, by the Court, K. Hart, deputy clerk

* * *

October 22, 1987: Settlement in this case having proved impossible, the court has thoroughly reviewed the merits and rules as follows: (1) This action is barred by the principles of res judicata. While the present appeal stems from an agency hearing subsequent to the last appeal to this court, the issue is precisely the same as that earlier presented. (2) In the alternative, the court rules that the Department of the Army decisions herein were not arbitrary or capricious. Accordingly, this action must be dismissed and judgment must enter for the defendant.

s/ William G. Young

District Judge

JUDGMENT ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS DATED OCTOBER 26, 1987

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 86-2192-Y

EDWARD D. COWHIG,

Plaintiff,

v.

JOHN O. MARSH, Secretary of the Army,

Defendant.

JUDGMENT

YOUNG, D.J. October 26, 1987

In accordance with the Court's order of October 22, 1987, it is hereby ORDERED:

Judgment be and hereby is entered for the Defendant.

s/ William G. Young

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Edward D. Cowhig, Pro Se

Plaintiff

v. Civil Action No. 86-2192Y

John O. Marsh, Secretary of the Army

Defendant

Plaintiff's Motion for Relief from Judgment and/or To Set Aside Judgment or to Vacate

December 2, 1987

Motion denied

William G. Young

District Judge

UNITED STATES DISTRICT COURT

FOR DISTRICT OF MASSACHUSETTS

Edward D. Cowhig, pro se

Plaintiff

Civil Action No. 86-2192Y

JOHN O. MARSH, Secretary of the Army

Defendant

MOTION FOR RECONSIDERATION AND/OR

AMENDMENT OF JUDGMENT

December 17, 1987

Upon consideration of the merits of this motion it is denied.

William G. Young

District Judge

UNITED STATES DISTRICT COURT

FOR DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG

Plaintiff pro se

v. CIVIL ACTION NO. 86-2192Y

JOHN O. MARSH, SECRETARY OF THE ARMY

Defendant

Motion for Relief From Judgment or Independent Action For Relief

Under Rule 60(B)(2)(3)(6) I move for relief from the order of this Court dated 22 Oct. 1987 and the judgment for the defendant made on 26 Oct. 1987. I petition this court in the alternative to accept this as an independent action.

To substantiate my claim for relief I submit as evidence the transcript of the hearing conducted by the ABCMR in September 1983, Exhibits thereto Tab A, the transcript thereto Tab B, the Transcript of the ABCMR hearing of

1974, (referred to in the minority report of 1984), as Tab C.

In addition to the reports of medical opinion of Dr. John Dowling given to me after I filed this case in this District Court in 1986. This letter of Dr. Dowling is certainly new evidence, though cumulative and corroborative. TAB D

Whether my copies of the hearings before the ABCMR are satisfactory for this court I do not know, but the official transcripts, along with my Administrative Record is under the control of the defendant in this case at bar.

December 17, 1987

The plaintiff has appealed to the Court of Appeals for the First Circuit from the judgment he attacks by way of this pleading. That appeal is pending. Accordingly, this court is presently without subject matter jurisdiction to act on this motion and therefore denies it, not on the

merits but on jurisdiction grounds.

William G. Young

District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Edward D. Cowhig, Pro Se Civil Action:

Plaintiff No. 86-2192Y

v.

John O. Marsh, Secretary of the Army

Defendant

Plaintiff's Motion for Reconsideration/ Clarification of the Court's Actions of 17 December 1987

Since I am operating "Pro Se" in this case I sincerely ask the court for reconsideration and/or clarification of the actions of this court on 17 December 1987, wherein a motion under Rule 59 for reconsideration, timely filed, was denied and on the same day my motion for relief from judgment or an independent action for relief, under Rule 60(b)(2)(3)(6) was denied on the grounds that the court was without subject matter jurisdiction and that an appeal was pending. Which one came first?

I quote from the transcript of the oral hearing before the Honorable William G. Young of 12 November 1986; "This is a session, however in which we are controlled by the technical legal requirements of pleading and practice."

I also quote from the Federal Rules of Appellate Procedure. Rule 4(a)(4), "If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: ... (111) under Rule 59to alter or amend the judgment: ... the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed <u>before</u> the disposition of any of the above motions <u>shall have no effect</u>. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above."

January 7, 1988,

No action can be taken hereon, the case presently being on appeal.

William G. Young, District Judge

APPENDIX G—ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT CONSOLIDATING APPEALS

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 88-1012

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

SECRETARY OF THE ARMY,

Defendant, Appellee.

ORDER OF COURT

ENTERED: January 12, 1988

Upon consideration of appellant's two motions to consolidate the three appeals filed in district court case number 86-2192,

It is ordered that the motion of appeals of October 29, 1987, December 7, 1987 and January 7, 1988 be consolidated and that they be treated as one appeal in this court.

By the Court: s/ Francis P. Sigliano, Clerk

GENERAL DOCKET

UNITED STATE COURT OF APPEALS

FOR THE

FIRST CIRCUIT

APPEAL FROM | CASE NO.

UNITED STATES DISTRICT COURT FOR | 88-1012

THE DISTRICT OF MASSACHUSETTS

TITLE OF CASE | ATTORNEYS FOR APPELLANT

EDWARD D. COWHIG | Edward D. Cowhig, Pro se

Plaintiff, | 245 C.J. Cushing Hwy.

Appellant, | Greenbush, MA 02044

v. | 535-4330

Secretary of the Army

Defendant, | ATTORNEYS FOR APPELLEE

Appellee. | Peter E. Gelhaar, Esq.

| 1107 J.W. McCormack POCH

NO. BELOW: | Boston, MA 02109

CA 86-02192 | (617)223-9407

JUDGE BELOW: J. Young

DATE OF JUDGMENT: October 26, 1987

NOTICE OF APPEAL FILED: October 29, 1987;

December 7, 1987; January 7, 1988

(Restoration to active duty)

ACCOUNT OF APPELLANT	REMARKS
FEE PAID	S&D 1/22
	B&A 2/16

GENERAL DOCKET

UNITED STATE COURT OF APPEALS

FOR THE

FIRST CIRCUIT

CASE NO. 88-1012 EDWARD D. COWHIG V SECRETARY OF THE ARMY

DATE	FILING-PROCEEDINGS
1988	
Jan. 12	Record on appeal in one volume, received and filed. Case docketed and notices mailed. (lw)
	Appellant's consolidation, received and filed. (lw)
	Appellant's consolidation of all appeals, received and filed. (lw)
	ORDER: (Bownes, J.) upon consideration of appellant's two motions to consolidate the three appeals filed in district court case number 86-2192, It is ordered that the motion of appeals of October 29,

1987, December 7, 1987 and January 7, 1988 be consolidated and the they be treated as one appeal in this court. Notices mailed. (lw)

Supplemental certificate consisting of pleadings # 35, received and filed. (lw)

Supplemental certificate consisting of pleadings numbers 4, 5, 6, 7, 8, 11, 23, 36, and 19, received and filed. (lw)

Supplemental certificate consisting of pleadings # 38, received and filed. (lw)

Supplemental certificate consisting of pleading #40, received and filed. (lw)

Jan. 20 Appearance of Edward D. Cowhig, Esq., Pro Se, received and filed. (lw)

Jan. 21 Motion of plaintiff-appellant for remand to the district court received

and filed.

Memorandum in support of motion to remand received and filed.

Jan. 22 Supplemental certificate to record on appeal consisting of document #39 received and filed. (jmo)

Jan. 26 Appearance of Peter E. Gelhaar, Esq., for the appellee, received and filed. (lp)

Jan. 26 Motion filed. ORDER (Bownes, J.) Upon motion of the appellant, Leave is granted to file appellant's statement of issues and designation of contents of the appendix instanter. Notices Mailed. (lp)

Jan. 27 Opposition of defendant-appellee to plaintiff-appellant's motion to remand case received and filed. (jmo)

Feb. 9 Motion filed. ORDER:(Breyer, J.) enlarging the time for filing brief for appellant and the appendix to the

briefs to and including March 16, 1988. Notices mailed. (fd)

Mar. 5 Order (Selya, J.) denying appellant's motion for remand to district court. Appellant may present his arguments in favor of a remand as part of his brief on appeal. Notices mailed. (jmo)

March 14 Motion of appellant, filed. ORDER (Selya, J.) Granting leave to the parties to proceed on the original record as certified to this Court by the Clerk of the District Court without reproduction in appendix form. Notices mailed. (pm)

March 14 Motion of appellant, filed. ORDER (Selya, J.) Granting leave to appellant to file a principal brief not to exceed sixty pages, exclusive of pages containing the table of contents, tables of citation and any

addendum containing statutes, rules, regulations, etc. Notices mailed. (pm)

March 16 Brief and appendix for appellant plus exhibits in five volumes, received and filed. Notices mailed. (rm)

April 19 Motion filed. ORDER (Torruella, J.) enlarging time for filing brief for appellee to and including May 6, 1988. Notice mailed. (CM)

Apr. 25 Assigned for submission at the May, 1988 session. (jms)

May 9 Motion filed. Order (Coffin, J.) finally enlarging the time for appellee to file its brief to and including May 13, 1988. Notices mailed. (lb)

May 9 Submitted before Ch. J. Campbell, JJ Coffin and Selya. (jms)

May 13 Brief for appellee, received and filed. (rm)

May 26 Reply brief for plaintiff-appellant, received and filed. (rm)

Oct 11 **JUDGMENT:** The judgment of the district court is affirmed. Unpublished opinion of the court per curiam. Notices mailed. (fd)

Oct. 25 Motion filed. ORDER (Breyer, J.) It is ordered that the time for appellant to file a petition for rehearing and suggestion for rehearing en banc be enlarged to and including November 1, 1988. Leave is granted appellant to file a petition not to exceed 26 pages in length. Notices mailed. (kld)

Nov. 1 Petition for rehearing ~~and suggestion~~ for rehearing En Banc received and filed. (jms)

1989

Jan. 11 Motion filed. ORDER (Selya, J.) Appellant's Petition for rehearing

and suggestion for rehearing en banc is denied. Notices mailed. (eml)

Jan. 19 Taxation of costs filed. Mandate issued, copy filed original papers returned to district court Notices mailed. (eml)

May 4 Notice of filing petition for certiorari with the Supreme Court (No. 88-1745), April 11, 1989 received and filed. (cm)

June 28 Order from the Supreme Court (June 26, 1989) denying the petition for writ of certiorari received and filed. (lb)

APPENDIX H — OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED OCTOBER 11, 1988

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 88-1012

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

SECRETARY OF THE ARMY

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young,

U.S. District Judge]

Before

Campbell, Chief Judge,

Coffin and Selya,

Circuit Judges

Edward D. Cowhig on brief prop se.

Peter E. Gelhaar, Assistant United States Attorney, and Frank L. McNamara, Jr., United States Attorney, on brief for the apellee.

OCTOBER 11, 1988

Per Curiam. Plaintiff-appellant Edward Cowhig, who served on active duty in the Army as a chaplain, resigned from the Army in January 1962 with an honorable discharge. In the instant action he seeks an order that the Army void his discharge and restore him to active service. He has already unsuccessfully sought this same relief on numerous occasions, fromthe Army Board for the Correction of Military Records ("ABCMR"), from the Court of Claims, and from the District of Massachusetts. This court's opinion affirming the district court's denial of relief in appellant's prior district court suit provides a more detailed account of appellant's previous litigation regarding this matter. Cowhig v. Marsh, 693 F.d 234 (1st Cir. 1982), cert. denied, 460 U.S. 1092 (1983). After that lawsuit was concluded, appellant againsought the same relief--that the Army void his discharge and restore him to active duty--from the ABCMR. After a hearing, the ABCMR by a 3-2 vote issued a

decision recommending that appellant be restored to active duty until his completion of twenty years' active service for retirement purposes. On March 29, 1984, however, the Deputy Assistant Secretary of the Army rejected this recommendation, adopted the minority position, and denied relief.

Over two years later, appellant filed the instant suit in the district court to overturn the Department of the Army's ruling and obtain restoration to active duty. The district court granted the motion of defendant-appellee John Marsh, Secretary of the Army, to dismiss appellant's claims. The court stated as follows: "1) This action is barred by the principles of res judicata. While the present appeal stems from an agency hearing subsequent to the last appeal to this court, the issue is precisely the same as that earlier presented. 2) In the alternative, the Court rules that the Department of the Army decisions herein were not arbitrary

or capricious." We affirm the judgment of the district court for these same reasons.

It is settled law that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Pasterczyk v. Fair, 819 F.2d 12, 13 (1st Cir. 1987) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). We agree with the district court that appellant's actionis barred under principles of claim preclusion by the finaljudgment in appellant's previous district court action against the same defendant, Cowhig, supra, 693 F.2d 234.

Appellant's only colorable argument against claim preclusion is that his present suit states a different cause of action than did his prior suit. The basis for this claim is that the present suit seeks to overturn the Department of the Army's 1984 ruling, which had not yet been handed down at the time of the first suit.

However, this court has embraced the principles of ss 24 of the Restatement (Second) of Judgments (1982) establishing a "transactional" definition of the underlying claim or cause of action. Manego v. Orleans Board of Trade, 773 F.2d 1, 5 (1st Cir. 1985), cert. denied, 475 U.S. 1084 (1986). Section 24 provides that "the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

There is no doubt in this case that appellant's claim arises out of the same "transaction" or "factual grouping" as did his claim in his previous suit. In both cases appellant has asserted that his 1962 discharge was improper because induced by erroneous or fradulent information supplied by Army personnel, and that accordingly he is entitled to reinstatement. The fact that the Department of

the Army heard and rejected appellant's allegations again in 1984, and that appellant now challenges that new 1984 finding, does not give rise to a new "claim" for claim preclusion purposes. The 1984 Department of the Army proceedings dealt with the same allegations, arising out of the same transactions is barred by principles of claim preclusion even though the plaintiff may have adopted a new theory of recovery. Pasterczyk v. Fair, 819 F.2d 12, 14 (1st Cir. 1987); Manego v. Orleans Board of Trade, 773 F.2d 1, 6-7 (1st Cir. 1985), cert. denied, 475 U.S. 1084; Capraro v. Tilcon Gammino, Inc., 751 F.2d 56 (1st Cir. 1985). Accordingly, the instant suit is barred by res judicata.

We also agree with the district court's alternative ground for dismissal. We must uphold the Department of the Army's 1984 decision unless it is arbitrary, capricious, unsupported by substantial evidence, or legally erroneous. Hodges v. Callaway, 499 F.2d 417, 423 (5th Cir.

1974). Appellant has demonstrated no basis for overturning the Department of the Army's decision to deny relief. It is clear from the governing statute that the Secretary of the Army was charged with the final decision on appellant's claim and was free to disregard the ABCMR's recommendation. 10 U.S.C. ss 1552(a); Miller v. Lehman, 801 F.2d 492, 497 (D.C. Cir. 1986). Further, our review of the record reveals that it contains ample evidence to support the Secretary's decision that appellant was discharged due to alcoholism and that appellant had continued to abuse alcohol after his discharge, rendering his restoration to active duty inappropriate. Therefore, even if principles of claim preclusion did not bar appellant's action and we were to review the Department's 1984 decision, we would affirm it as supported by substantial evidence.

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO. 88-1012

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

SECRETARY OF THE ARMY,

Defendant, Appellee.

JUDGMENT

Entered: October 11, 1988

This cause was submitted on briefs on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

s/ Francis P. Scigliano, Clerk

[cc: Messrs. Cowhig and Gelhaar]

APPENDIX I — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED JANUARY 11, 1989

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO. 88-1012

EDWARD D. COWHIG,

Plaintiff,

Appellant,

v.

SECRETARY OF THE ARMY,

Defendant, Appellee.

Before

Campbell, Chief Judge,

Coffin, Brownes, Breyer, Torruella and Selya,

Circuit Judges.

ORDER OF COURT

Entered January 11, 1989

Appellant's petition for rehearing and suggestion for rehearing en banc is denied.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Messrs Cowhig and Gelhaar]

CLOSED

U. S District Court

U. S. District Court - Massachusetts (Boston)

CIVIL DOCKET FOR CASE #: 90-CV-11297

Cowhig v. Chief of Chaplains, et al

Assigned to: Judge Mark L. Wolf

Demand: $0,000

Lead Docket: None

Dkt# in other court: None

Filed: 05/16/90

Jury demand: Plaintiff

Nature of suit: 440

Jurisdiction: US Defendant

Cause: 18:1961 Racketeering (RICO) Act

Edward D. Cowhig Edward D. Cowhig

Plaintiff [COR LD NTC] [PRO SE]

245 C. J. Cushing Highway

Greenbush, MA 02040-0154

617-545-4330

v.

CHIEF OF CHAPLAINS, U.S. ARMY

Defendant

SURGEON GENERAL, U.S. ARMY

Defendant

CHIEF, LEGISLATIVE LIAISON OFFICE, U.S. ARMY

Defendant

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS, (ABCMR)

Defendant

ARCHDIOCESE FOR MILITARY SERVICES

Defendant

Docket as of May 3, 1993 11:43 am Page 1

Proceedings include all events. CLOSED

1:90cv11297 Cowhig v. Chief of Chaplains, et al

5/16/90 1 Complaint filed (bdb)

5/16/90 -- Filing Fee Paid; FILING FEE $120 RECEIPT #03487 (bdb)

5/16/90 -- Summons(es) issued for Chief of Chaplains, Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili (bdb)

5/17/90 2 Return of service executed by hand as to Secretary of the Army, the Pentagon, signed by U.S. Attorney Office, Boston, Army Board For Corr 5/17/90 Answer due on 6/6/90 for Army Board For Corr (unsigned signature of server noted). (jdj)

7/13/90 3 Motion by Chief of Chaplains, Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili to dismiss (jdj) [Entry date 07/19/90]

7/13/90 4 Memorandum by Chief of Chaplains, Surgeon General, Chief, Legislative, Army

Board For Corr, Archdiocese For Mili in support of [3-1] motion to dismiss (jdj) [Entry date 07/19/90]

7/19/90 7 Acknowledgment of service as to Archdiocese For Mili 5/21/90 Answer due on 6/10/90 for Archdiocese For Mili (jdj) [Entry date 07/23/90]

7/20/90 5 Motion by Edward D. Cowhig to extend time to respond to D.s mtn to dismiss to 9/14/90 (jdj) [Edit date 07/20/90]

7/23/90 6 Return of service executed as to Chief of Chaplains, Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili 5/22/90 Answer due on 6/11/90 for Archdiocese For Mili, for Army Board For Corr, for Chief, Legislative, for Surgeon General, for Chief of Chaplains (jdj)

7/25/90 8 Motion by Chief of Chaplains, Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili in support of [8-1] motion for leave to file

Amended mtn to dismiss (jdj)

7/31/90 9 Memorandum by Chief of Chaplains, Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili in support of [8-1] motion for leave to file Amended mtn to dismiss (jdj)

8/2/90 -- Judge Mark L. Wolf. Endorsed Order granting [5-1] motion to extend time to respond to D.s mtn to dismiss to 9/14/90 (jdj)

8/27/90 10 Motion by Archdiocese For Mili to dismiss (jdj) [Entry date 08/28/90]

Docket as of May 3, 1990 11:43 am Page 2

Proceedings include all events. CLOSED

1:90cv11297 Cowhig v. Chief of Chaplains, et al

8/27/90 11 Memorandum by Archdiocese For Mili in support of [10-1] motion to dismiss (jdj) [Entry date 08/28/90]

9/13/90 12 Response by Edward D. Cowhig in opposition to [10-1] motion to dismiss (jdj)

9/14/90 13 Motion by Chief of Chaplains,

Surgeon General, Chief, Legislative, Army Board For Corr, Archdiocese For Mili to strike [12-1] opposition response (jdj) [Entry date 09/17/90]

9/26/90 14 Memorandum by Edward D. Cowhig in opposition to [13-1] motion to strike [12-1] opposition response (jdj)

11/14/90 15 Letter to the court Re: Rodriguez v Banco w/attached copy of appeals court decision (jdj)

11/21/90 16 Letter to the court by Mr. Cowhig (jdj)

1/15/91 17 Letter and enclosed correspondence by Rev. Edward D. Cowhig. (jdj) [Entry date 01/18/91]

2/22/91 18 Judge Mark L. Wolf. Order, set status conference for 11:30 4/5/91 Cl to meet to discuss settlement by 3/15/91 and report on meeting by 3/27/91.issued (jdj) [Entry date 02/25/91]

3/26/91 19 letter to the court by Annette Forde

Re: settlement of this case. filed (jdj)

3/27/91 20 Status report filed (jdj)

3/28/91 21 Status report from Edward Cowhig filed (jdj)

3/29/91 22 Letter to the court w/attachments from E. Cowhig (jdj)

4/5/91 23 Judge Mark L. Wolf. Clerk's Notes: granting [10-1] motion to dismiss (jdj) [Entry date 04/09/91]

4/5/91 -- Case closed (jdj) [Entry date 04/26/91]

4/25/91 24 Judge Mark L. Wolf. Order Action is dismissed for reasons stated in United States Memorandum. issued (jdj) [Entry date 04/30/91]

4/25/91 34 Letter to the court w/attachments Regarding case in general. filed by Edward Cowhig (jdj) [Entry date 10/07/91]

6/27/91 25 Letter to the court from Father Cowhig stating he did not receive copy of communication from court regarding case (jdj)

Proceedings include all events. CLOSED

1:90cv11297 Cowhig v. Chief of Chaplains, et al

7/2/91 26 Judge Mark L. Wolf. Judgment for Chief of Chaplains, Surgeon General, Chief, legislative, Army Board For Corr, Archdiocese For Mili against Edward D. Cowhig (jdj)

7/3/91 27 Motion by Edward D. Cowhig to vacate [26-1] judgment order (jdj)

7/17/91 28 Response by Chief of Chaplains, Surgeon General, Chief, legislative, Army Board For Corr, Archdiocese For Mili in opposition to [27-1] motion to vacate [26-1] judgment order (jdj)

7/29/91 29 Reply by Edward D. Cowhig in response to [27-1] motion to vacate [26-1] judgment order (jdj) [Entry date 04=7/30/91]

8/5/91 30 Judge Mark L. Wolf. Order denying [27-1] motion to vacate [26-1] judgment order (jdj) [Entry date 08/07/91]

9/4/91 31 Letter From Mr. Cowhig w/attachments Re: Appeal record due on 10/31/91 (jdj)

10/1/91 32 Notice of appeal by Edward D. Cowhig Appeal record due on 10/31/91 (jdj)

10/7/91 33 Letter to the court RE: Rule 10b F.R.A.P from Mr. Cowhig. filed (jdj)

10/16/91 -- USCA appeal fees received $105, receipt #12797 (kmn) [Entry date 10/30/91

10/17/91 -- Certified copy of docket and record on appeal forwarded to U.S. Court of Appeals: [32-1] appeal (kmn) [Entry date 10/30/91]

10/23/91 -- Transmitted supplemental record on appeal: Document 31 [32-1] appeal (kmn) [Entry date 10/30/91]

11/14/91 35 Motion by Edward D. Cowhig for reconsideration of [26-1] judgment order (jdj)

11/20/91 36 Response by Chief of Chaplains, Surgeon General, Chief, legislative, Army Board For Corr, Archdiocese For Mili to [35-1] motion for reconsideration of [26-1] judgment order (jdj)

11/25/91 37 Response by Archdiocese For Mili in

opposition to [35-1] motion for reconsideration of [26-1] judgment order (jdj)

12/2/91 38 Response by Edward D. Cowhig to [35-1] motion for reconsideration of [26-1] judgment order (jdj)

12/18/91 -- Transmitted supplemental record on appeal: brief attached to #34, [32-1] appeal (kmn) [Entry date 12/31/91]

Docket as of May 3, 1993 11:43 am Page 4

Proceedings include all events CLOSED

1:90cv11297 Cowhig v. Chief of Chaplains, et al

3/25/92 -- Judge Mark L. Wolf. Endorsed Order denying [35-1] motion for reconsideration of [26-1] judgment order (jdj)

4/2/92 39 Motion by Edward D. Cowhig for post judgment motion for appeal. (jdj)

4/16/92 -- Certified copy of docket and record on appeal forwarded to U.S. Court of Appeals: [32-1] appeal (kmn)

4/21/92 -- Notice of Docketing ROA from USCA

Re: [32-1] appeal USCA NUMBER: 92-1440 (kmn) [Entry date 04/27/92]

4/22/92 -- USCA appeal fees received $105, receipt #16674. (kmn) [Entry date 05/18/92]

6/25/92 40 Mandate of USCA Re: [32-1] appeal affirming the judgment of the district court, Filed. (kmn) [Entry date 06/29/92]

12/7/92 41 United State Court of Appeals. Opinion; The District court's denial of Cowhig's Fed.R.Civ.P. 60(b) motion is affirmed, Filed. (kmn) [Entry date 12/09/92]

2/16/93 42 Mandate of USCA Re: affirming (eaf) [Entry date 02/17/93]

2/16/93 -- Record on appeal returned from U.S. Court of Appeals: (eaf) [Entry date 02/17/93]

3/17/93 -- Terminated document (jdj)

Docket as of May 3, 1993 11:43 am Page 5

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG,

Plaintiff,

v. C.A. No. 90-11297-WF

CHIEF OF CHAPLAINS,

U.S. ARMY, ET AL.,

Defendants.

ORDER

WOLF, D.J.

April 25, 1991

For the reasons stated by the United States in its memorandum, the claims against it are barred by the doctrines of res judicata and collateral estoppel.

With regard to the claims against the Archdiocese for Military Service, for the reasons stated in its memorandum this action is barred by the statute of limitations.

Accordingly, this action is hereby DISMISSED.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action

No. 90-11297-WF

EDWARD D. COWHIG,

Plaintiff,

v. JUDGMENT

CHIEF OF CHAPLAINS,

U.S. ARMY, ET AL.,

Defendants.

This action came on for a hearing before the court, Wolf, D.J., on motions to dismiss by each of the defendants, and the issues having been duly heard and each of the defendants' motion having been allowed, by Order, dated April 25, 1991,

It is ORDERED AND ADJUDGED:

All of the defendants' motions to dismiss, pursuant to Fed. R. Civ. P. 12, are GRANTED for the reasons set forth in the court's Order of April 15, 1991 and the plaintiff's complaint is DISMISSED in its entirety.

JUDGMENT FOR THE DEFENDANTS.

Dated at Boston, Massachusetts, this 29th day of June, 1991.

BY THE COURT,

DEPUTY CLERK

_____

UNITED STATES DISTRICT JUDGE

ENTERED:

GENERAL DOCKET

UNITED STATE COURT OF APPEALS

FOR THE

FIRST CIRCUIT

APPEAL FROM UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 912027

TITLE OF CASE	ATTORNEYS FOR APPELLANT
	Edward D. Cowhig Pro Se
EDWARD D. COWHIG	245 C. J. Cushing Hwy.
Plaintiff,	Greenbush MA 02040-0154
Appellant,	545-4330
v.	
CHIEF OF CHAPLAINS	ATTORNEYS FOR APPELLEE
U.S. ARMY, ET AL	ARCHDIOCESE OF
Defendants,	MILITARY SERVICE
Appellees,	Robert L. Farrell Esq.
	Gary D. Buseck, Esq.
	Parker, Coulter, Daley & White
NO. BELOW:	One Beacon Street

CA. 90-11297	Boston, MA 02108
JUDGE BELOW:	723-4500
Wolf, J. (0123)	UNITED STATES ARMY
DATE OF ORDER:	Annette Forde, Esq.
August 7, 1991	Asst. U.S. Attorney
NOTICE OF APPEAL	1107 JW McCormack POCH
FILED:	Boston, MA 02109
October 1, 1991	223-9403

[Denial of Motion]

DATE	ACCOUNT OF APPELLANT	REMARKS
1991	FEE PAID	S&D 10/28
	N.S.#: 2-440	B&A 11/22

D.C.#: 0101-1

Filed: 05/16/90

DATE FILINGS-PROCEEDINGS

1991

Oct. 11 Copy of notice of appeal and copy of district court docket entries received and filed. Case docketed and notices mailed. (ac)

Oct. 18 Record on appeal in one volume, received and filed. Notices mailed. (ac)

Appearance of Edward D. Cowhig, appellant, received and filed.(ac)

Oct. 28 Supplemental certificate consisting of documents numbered 31, received and filed. (dk)

Oct. 29 Appearance of Robert L. Farrell, Esq. and Gary D. Buseck, Esq. for appellees, received and filed. (ac)

Oct. 30 Appellant's statement of issues and designation of contents, received and filed. (ac)

Nov. 4 Appearance of Annette Forde, Esq. for appellees, received and filed. (ac)

Nov. 4 Counterdesignation of defendant/appellee

Archdiocese for Military Service, U.S.A. Pursuant to fed.R.App.P. 30(b), received and filed. (ac)

Nov. 20 Letter/Motion filed. ORDER: (Selya, J.) enlarging the time for appellant to file his brief and appendix to the brief to and including November 29, 1991. Notices mailed. (ac)

Nov. 25 Appellees motion to dismiss the appeal, or in the alternative for summary affirmance, received and filed. (ac)

Appellees memorandum in support of motion to dismiss or in the alternative for summary affirmance, received and filed. (ac)

Nov. 27 Brief for appellant and appendix volumes A thru G received and filed. Notices mailed (ac)

Dec. 2 Appellant's opposition to defendant's motion to dismiss or for summary affirmance received and filed. (ac)

Dec. 5 ORDER: (Cyr, J.) Appellee's motion for

summary affirmance will be treated as their brief on appeal and the appeal will be decided in due course. Notices mailed. (ac)

Dec. 18 Brief of appellee Archdiocese for Military Services, USA received and filed. (bf)

Dec. 31 Submitted to Campbell, Selya, Cyr, JJ. (cm)

1992

Jan. 7 Motion filed. Order: (Campbell, J.) enlarging the time for appellant to file his reply brief to and including January 20, 1992. Notices mailed. (ac)

Jan. 10 Appellant's motion for discovery mandamus and/or civil investigative demand (C.I.D.) received and filed. (ac)

Jan. 17 Motion filed. ORDER: (Campbell, J.) enlarging the time for appellant to file his reply brief to an including January 28, 1992. Notices mailed. (ac)

Jan. 29 Reply brief of appellant received and

filed. (bf)

Feb. 14 ORDER: (Selya, J.) Appellant's motion for discovery, mandamus and/or civil investigative demand is denied. A party cannot obtain discovery on appeal. Notices mailed. (ac)

Feb. 21 Motion for reconsideration of this court's denial of plaintiff's motion for discovery and/or civil investigative demand (C.I.D.) entered February 14, 1992, and a suggestion for oral interrogation if oral argument is to be suspended, received and filed. (ac)

Mar. 24 Appellant's motion and petition for this court to consider arguments and motion previously and timely submitted to the District Court on 13 November 1991, under Rule 60(b)(1)(2) and (3) as well as (6) but to which the lower court has to date not been responsive, one way or another, leaving this plaintiff once more in the dark unfairly.

received and filed. (as)

Mar. 27 JUDGMENT: The judgment of the district court is affirmed. Unpublished opinion of the court Per Curiam. Notices mailed. (AC)

Mar. 31 Motion filed. ORDER: (Torruella, J.) enlarging the time for appellant to file his petition for rehearing with a suggestion for rehearing en banc to and including April 17, 1992. If appellant wishes the Court to review the denial of his Rule 60 motion by the district court he should file a timely notice of appeal to this court. Notices mailed. (ac)

April 9 Motion filed. ORDER: (Breyer, Ch. J.) Leave is granted appellant to file a petition for rehearing not to exceed 25 pages. Notices mailed. (ac)

Apr. 16 Petition for re-hearing and re-hearing en banc, received and filed. (ac)

April 17 Supplemental Record consisting of Pleadings Nos. 35, 36, 37 and 39, received and

filed. (db)

June 17 ORDER: (Breyer, Ch. J., Campbell, Torruella, Selya, Cyr, Boudin, JJ) the petition for rehearing and rehearing en banc is denied. Notices mailed. (ac)

June 25 Taxation of cost filed. Mandate issued copy filed original papers retained for companion case. Notices mailed. (ac)

Dec. 17 Supreme Court notice regarding a petition for writ of certiorari filed on November 17, 1992, Supreme Court Number 92-1004, received and filed, (db)

1993

Mar 3 Supreme Court order dated February 22, 1993, denying the petition for writ of certiorari in /supreme Court No. 92-1004, received and filed. (db)

No. 91-2027

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

CHIEF OF CHAPLAINS, U.S. ARMY, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Mark L. Wolf, U.S. District Judge]

Before

Selya, Circuit Judge,

Campbell, Senior Cicuit Judge,

and Cyr, Circuit Judge.

Edward D. Cowhig on brief prop se.

Wayne A. Budd, United States Attorney, and Annette Forde, Assistant United States Attorney, on Motion

to Dismiss the Appeal or in the Alternative for Summary Affirmance for appellee Secretary of the Army, et al.

Robert L. Farrell, Gary D. Buseck and Parker, Coulter, Daley & White, on brief for appellee Archdiocese for Military Services, U.S.A.

MARCH 27, 1992

Per Curiam. Plaintiff-apellant Edward Cowhig filed this action in the District of Massachusetts on May 16, 1990, claiming that the circumstances surrounding his discharge in January 1962 from his position as a chaplain in the U.S. Army violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. ss 1961-68. Cowhig alleged that in 1961 a letter, purporting to be from Army Lt. Gen. Paul Carraway, was sent to the U.S. Army Chief of Chaplains. According to Cowhig, the letter was forged as the result of an illicit conspiracy against him. The leter, which

recounted incidents of Cowhig's alcohol abuse, resulted in Cowhig's discharge. Cowhig's complaint named the Secretary of the Army, four different agencies within the Army, and the Archdiocese for Military Services, U.S.A. The district court, in a brief, one-page order issued April 25, 1991, dismissed Cowhig's claims against the Army defendants on grounds of res judicata and collateral estoppel, and dismissed Cowhig's claims against the Archdiocese as barred by the statute of limitations.

Cowhig already has unsuccessfully challenged his discharge from the Army and sought reinstatement on numerous occasions, albeit without invoking RICO. In Cowhig v. Marsh, 693 F.2d 234 (1st Cir. 1982), cert. denied, 460 U.S. 1092 (1983), this court affirmed an order denying him relief in such a challenge, finding that his action for reinstatement, claiming mistake and fraud, was barred by the statute of limitations. This court's opinion detailed Cowhig's previous

litigation before the Army Board for the Correction of Military Records and the Court of Claims regarding this matter. Id. at 234-235.

Again on October 11, 1988, this court, in an unpublished opinion, affirmed the dismissal on grounds of res judicata of a similar action brought by Cowhig. Cowhig v. Secretary of the Army, slip. op., No. 88-1012 (1st Cir. 10/11/88). In form Cowhig's action in that case sought review of an adverse determination by the Department of the Army, but in substance Cowhig alleged that his discharge had been induced by erroneous or fraudulent information provided by Army personnel. This court ruled that although Cowhig had asserted a different cause of action than in his prior suit, both actions arose out of the same transactions. Cowhig was merely changing his theory of recovery. Thus, under the "transactional" approach to res judicata embraced by this court in Manego v. Orleans Board of Trade, 773 F.2d 1, 5 (1st Cir. 1985), cert. denied, 475

U.S. 1084 (1986), we found Cowhig's new action to be precluded. See Restatement (Second) of Judgments ss 24 (1982).

Cowhig's instant claims against the five federal defendants are precluded for precisely the same reasons. Now Cowhig claims yet again that his discharge resulted from fraudulent information provided by Army personnel. This time, he relies on RICO for his theory of recovery, but the transactions he alleges are precisely the same as those alleged in his revious suits. For the reasons we stated in our 1988 unpublished opinion, we agree with the district court that principles of res judicata and collateral estoppel preclude this endless re-pouring of old wine into new bottles. See Kale v. Combined Insurance Co., 924 F.2d 1161, 1166 (1st Cir.), cert. denied, 112 S.Ct. 69 (1991).

Cowhig objects that his prior suit was dismissed on statute of limitations grounds, so that he never received an adjudication of his

claim on the merits. This distinction, however, has no relevance for res judicata purposes. "It is beyond peradventure that the dismissal of a claim as time-barred constitutes a judgment on the merits, entitled to preclusive effect." Id. at 1164.

The five federal defendants named in the complaint herein are (1) the Secretary of the Army; (2) the Chief of Chaplains, U.S. Army; (3) the Surgeon General, U.S. Army; (4) the Chief, Legislative Liaison Office, U.S. Army, and (5) the Army Board for Correction of Military Records. The Secretary of the Army was named as a defendant in Cowhig's last two federal actions. Since the claims against the other four federal defendants involve official actions of the Army rather than any actions taken by any of them personally, we conclude that these defendants are sued in their official capacities. Under res judicata principles, a judgment in favor of the United States in a prior suit precludes relitigation of

the same issues between the same plaintiff and other federal defendants in their official capacity. Walsh v. International Longshoremen's Ass'n., 630 F.2d 864, 870 (1st Cir. 1980). Accordinglly, res judicata bars Cowhig's action against all five federal defendants.

Since the Archdiocese, unlike the Army, was not a party to any of Cowhig's prior suits, aplication of res judicata and collateral esoppel principles to bar Cowhig's claims against the Archdiocese is less straightforward. Since Cowhig has had a full and fair opportunity to litigate his discharge in previous actions, the Archdiocese may well be entitled to invoke principles of collateral estoppel defensively to revent Cowhig from relitigating the matter against it. See Lynch v. Merrell-National Laboratories, 830 F.2d 1190, 1192 (1st Cir. 1987).

In any event, we agree with the district court that Cowhig's claims against the Archdiocese are barred by the statute of limitations. The

statute of limitations for civil RICO actions is four years. Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 156 (1987). A civil RICO claim accrues "his injury," Rodriguez v. Banco Central, 917 F.2d 664, 665-66 (1st Cir. 1990), unless tolled under standard tolling doctrines like fraudulent concealment. Id. at 667-68, and cases cited therein. Here, Cowhig discovered his injury in 1962 when he was discharged. Thus, his RICO suit is decades late.

Cowhig does allege fraudulent concealment of his cause of action as part of the illicit conspiracy against him. However, his allegation is that defendants conspired to deny him access to the allegedly fraudulent letter of Lt. Gen. Carraway. Cowhig acknowledges, nevertheless, that the Archdiocese ultimately provided him with a copy of that letter in August 1980. As of that date, therefore, he should have known whether he had a cause of action based on alleged misstatements in that letter. Furthermore, Cowhig

asserts that in 1979 Lt. Gen. Carraway denied either writing or authorizing the letter. Indeed, the record shows that in a 1979 application for relief from the Army Board for Correction of Military Records, Cowhig alleged that his discharge resulted from "a fraudulent forged document submitted by unknown persons." Since Cowhig did not bring this RICO suit against the Archdiocese until 1990, eleven years later, the suit is time-barred.

Cowhig's motion for reconsideration of this court's order denying his motion for discovery on appeal is denied.

Cowhig's request for "oral interrogation" in lieu of oral argument is denied.

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 91-2027

EDWARD D. COWHIG

Plaintiff, Appellant,

v.

CHIEF OF CHAPLAINS, U.S. ARMY, ET. AL.,

Defendants, Appellees.

JUDGMENT

Entered: March 27, 1992

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts. Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

FRANCIS P. SCIGLIANO, Clerk.

[cc] Messrs. Cowhig, Budd, Farrell]

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG,

Plaintiff,

v. C.A. No. 90-CV-11297-WF

CHIEF OF CHAPLAINS,

ET AL.,

Defendants.

ORDER

WOLF, D.J. August 5, 1991

Essentially for the reasons stated in the Federal Defendants' Opposition to Motions for Amendment of Judgment filed July 17, 1991 (Docket Number 28), Plaintiff's Motions for Amendment of Judgment Under Rule 52(b) Fed. R. Civ. P.; Right of Trial by Jury, Rule 38(a)(b); New Trial and Amendment of Judgments, Rule 59; Relief from Judgment or Order Rule 60(a)(b) (Docket No. 27), is hereby DENIED.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG

Plaintiff, Pro Se

v.

MIChAEL P. W. STONE, et. al.,

Defendant

MOTION FOR RECONSIDERATIN AND RELIEF

FROM JUDGMENT ON THE GROUNDS OF NEW EVIDENCE

RECENTLY DISCOVERED AND THE CONTINUED AND

CONTINUING MISCONDUCT OF THE ADVERST PARTY,

AS IN RULE 60 FEDERAL RULES OF CIVIL PROCEDURE

(F.R.C.P.)

Denied

Wolf, D.J.

3/21/92

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

EDWARD D. COWHIG, Pro Se

Appellant, Plaintiff No. 92-1440

v.

MICHAEL P. W. STONE, SEC. ARMY, ET AL

Appellees, Defendants

(Sometimes Referred to as:

Chief of Chaplains

U.S. Army, Et Al

Defendants, Appellees

APPEAL FROM DENIAL ON 21 MARCH 1992 IN DISTRICT COURT OF MOTION FOR RECONSIDERATION AND RELIEF FROM JUDGMENT ON THE GROUNDS OF NEW EVIDENCE RECENTLY DISCOVERED AND THE CONTINUED AND CONTINUING MISCONDUCT OF THE ADVERSE PARTY AS IN RULE 60 F.R.C.P.

Edward D. Cowhig, Pro Se

Plaintiff Appellant

245 C.J. Cushing Highway

Greenbush, MA 02040-0154

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

CIRCUIT

Appeal From United States District Court

Case No. 921440

Title of Case	Attorneys For Appellant
Edward D. Cowhig	Edward D. Cowhig, Pro Se
Plaintiff, Appellant	245 C.J. Cushing Hwy.
v.	Greenbush, MA 02040-0154
Chief of Chaplains,	545-4330
U.S. Army, Et. Al.	
Defendants, Appellees.	

Attorneys For Appellee

Annette Forde, Esq.

Assistant U.S. Attorney

1107 J.W. McCormack POCH

Boston, MA 02109

Comp. to 91-2027

No. Below: CA. 90-11297

Judge Below: Wolf, J.

Date of Judgment: Order: March 25, 1992

Notice of Appeal Filed: April 2, 1992

[Racketeering Rico Act]

Date	Account of Appellant	Remarks
1992	Fee Paid	S&D 4/427
	D.C.#. 0101-1	B&A 5/28
	N.S.# 2-440	
	Filed: 05/16/90	

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

Case No. 921440 Edward D. Cowhig v.
Chief of Chaplains, U.S. Army
Et. Al.

Apr 16 Copy of notice of appeal and copy of district court docket entries received and filed. Case docketed and notices mailed. (See record in companion case 91-2027). (ac)

Apr 17 Supplemental Record consisting of Pleading Nos. 35, 36, 37, and 39, received and filed (db).

Apr 22 Appearance of Edward D. Cowhig, appellant, received and filed. (ac) Appellant's motion to consolidate, received and filed. (ac)

Apr 28 Appellees motion to dismiss the appeal or in the alternative for summary affirmation received and filed. (ac)

Appearance of Annette Forde, Esq. for appellees, received and filed. (ac)

May 4 Appellee's motion for summary affirmance pursuant to Local Rule 27.1, received and filed. (ac)

May 14 ORDER: (Cyr, J.) The motion for consolidation is denied. Notices mailed. (ac)

May 20 Motion filed. ORDER (Cyr, J.) Upon motion it is ordered that the time for appellant to file his brief and appendix be enlarged to and including May 28, 1992. Notices sent. (db)

May 27 Brief and appendix of appellant in one volume received and filed. Notices mailed.

June 24 Appellee's motion to treat its motion for summary affirmance as its brief on appeal and to join in the brief of the Federal defendants. Received and filed. (ac)

June 25 ORDER: (Campbell, J.) Leave is granted appellees to treat its motion for summary affirmance as its brief on appeal. It is further ordered that leave be granted to the extent that brief addresses issues common to both the Archdiocese and the federal defendants. Notices mailed. (ac)

June 26 Brief of appellees received and filed. (bf)

July 8 Motion filed. ORDER: (Selya, J.) enlarging the time for appellant to file his reply brief to and including July 24, 1992. Notices mailed. (ac)

July 13 Submitted to Selya, Cyr, Boudin, JJ. (cm)

July 22 Motion filed. ORDER: (Selya, J.) Leave is granted appellant to file a reply brief not to exceed 35 pages, exclusive of pages devoted to table of contents, table of citations, and any addendum containing statutes, rules, regulations, etc. Notices mailed. (ac)

July 23 Reply brief of appellant received and filed.(bf)

July 28 ORDER: (Selya, J.) Appellees' motions to dismiss the appeal, or for summary affirmance are denied. Briefing having been completed, the appeal will be decided in due course. Notices mailed. (ac)

Sept 8 Petition for Oral Argument in the Above Cited Case, received and filed. (pm)

General Docket

United States Court of Appeals

Case No. 92-1440 Edward D. Cowhig v.
Chief of Chaplains,
U.S. Army ET AL.

1992

Sept 8 Opposition to petition for oral argument, received and filed. (db).

Sept. 17 ORDER: (Breyer, Ch.J., Torruella, Selya, JJ) The motion for oral argument is denied. Notices sent. (Db)

Sept 25 Petition for reconsideration of denial of motion for oral argument on September 17, 1002, received and filed. (rm)

Oct 2 ORDER: (Torruella, J.) Appellant's petition for reconsideration of the denial of appellant's motion for oral argument is denied. Notices mailed. (ac)

Dec 7 JUDGMENT: The judgment of the district court is affirmed. Unpublished opinion of the court Per Curiam. Notices mailed. (ac)

Dec 17 Motion filed. ORDER: (Cyr, J.) It is ordered that the time for appellant to file a petition for rehearing with a suggestion for rehearing en banc be enlarged to and including January 11, 1993. Notices mailed. (ac)

1993

Jan 5 Motion filed. ORDER: (Cyr, J.) Leave is granted appellant to file a petition for rehearing not to exceed 25 pages. Notices mailed. (ac)

Jan 8 Petition for rehearing and rehearing en bank, received and filed. (ac)

Feb 5 ORDER: (Breyer, Ch. J., Torruella, Selya, Cyr, Boudin, Stahl, JJ) Appellant's petition for rehearing and rehearing en banc is denied. Notices mailed. (ac)

Feb 16 Taxation of costs filed. Mandate issued copy field. Original papers returned to district court. Notices mailed. (ac)

United States Court of Appeals

for the First Circuit

No. 92-1440

Edward D. Cowhig

Plaintiff Appellant,

v.

Chief of Chaplains, U.S. Army, ET Al.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES

DISTRICT COURT FOR THE DISTRICT

OF MASSACHUSETTS

[Hon. Mark L. Wolf, U.S. District Judge]

Selya, Cyr, and Boudin,

Circuit Judges

Edward D. Cowhig on brief pro se.

A. John Pappalardo, United States Attorney, and

Annette Forde, Assistant U.S. Attorney, on brief for appellees.

December 7, 1992

Per Curiam. Plaintiff-appellant Edward Cowhig filed an action in the District Court for the District of Massachusetts on May 16, 1990, claiming that the circumstances surrounding his discharge in January 1962 from his position as a chaplain in the U.S. Army violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961-68. Before bringing that action Cowhig already had unsuccessfully challenged his discharge from the Army and sought reinstatement on numerous occasions. See, e.g., Cowhig, v. Secretary of the Army, 460 U.S. 1092 (1983). The district court dismissed Cowhig's motion on April 25, 1991, on grounds of res judicata, collateral estoppel, and the statute of limitations. The district court entered judgment for defendants on July 23, 1991. This court affirmed. Cowhig v. Chief of Chaplains, slip op., No. 91-2027 (1st Cir. 3/27/92).

While the appeal in Cowhig's case was pending, Cowhig filed a Fed. R. Civ. P. 60(b)

motion in the district court requesting that the district court reconsider its judgment on the grounds of newly discovered evidence. The district court summarily denied Cowhig's motion. Cowhig appeals. We affirm.

The rule based on which Cowhig sought reconsideration of the judgment, Rule 60(b), provides as follows:

> "On motion and upon such terms as are just, the court may relieve a part of a party's legal representative from a final judgment, order, or proceeding for the following reasons: ...(2) newly discovered evidence which by due diligence would not have been discovered in time to move for a new trial under Rule 59(b)."

This court will disturb a district court's denial of a Rule 60(b) motion only upon a finding that the district court abused its discretion in denying the motion. Roderiquez-Antuna v. Chase Manhattan Bank Corp., 871 F.2d 1, 3 (1st Cir. 1989); Ojeda-Toro v. Rivera-Mendez, 853 F.2d 25, 28 (1st Cir. 1988).

The putative "newly discovered" evidence offered by Cowhig in support of his Rule 60(b)(s)

motion consisted of the following four items: (1) August 1991 letters of Lt. Col. Thomas Kelly discussing typhoon weather conditions and paratroop operations on Okinawa in 1961; (2) October 1961 and March 1985 letters of Dr. George Roark diagnosing Cowhig's medical condition on Okinawa in 1961-62, in part reviewing Dr. Roark's 1982 testimony on the same subject before the Army Board for the Correction of Military Records; (3) an October 1991 letter from Dr. John Day diagnosing Cowhig's medical condition in the early 1960's; and (4) a January 1986 letter from Dr. William Rohde doing the same. None of these items of evidence meet the Rule 60(b)(2) requirement that the evidence could not have been discovered in time for a Rule 59 motion, i.e., by July 1991. Dr. Rohde's January 1986 letter and Dr. Roark's March 1985 letter were in existence before that time and obviously do not constitute newly discovered evidence. Lt. Col. Kelly's letter concerning conditions in Okinawa in 1961 sets

forth information that should have been available to Cowhig at any time between his January 1962 discharge and July 1991. Finally, the October 1991 medical diagnoses of Dr. Roark and Dr. Day could have been obtained, in the exercise of due diligence, by July 1991. Thus, Cowhig in fact presented no newly discovered evidence at all.

Even were it otherwise, "It is the invariable rule, and thus, the rule in this circuit, that a litigant, as a precondition to relief under Rule 60(b), must give the trial court reason to believe that vacating the judgment will not be an empty exercise." Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Superline Transportation Co., 953 F.2d 17, 20 (1st Cir. 1991). The litigant must, instead, "at least establish that it possesses a potentially meritorious claim or defense which, if proven, will bring success in its wake." Id. at 21. Here, by contrast, even if the trial court were to accept as true all the assertions concerning

Cowhig's medical condition in 1961-62 that are contained in Cowhig's proffered evidence, that would avail Cowhig nothing. All of Cowhig's proffered evidence is irrelevant to the res judicata, collateral estoppel, and statute of limitations grounds upon which the district court based its judgment against Cowhig.

The district court's denial of Cowhig's Fed. R. Civ. P. 60(b) motion is affirmed.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 92-1440

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

CHIEF OF CHAPLAINS, U.S. ARMY, ET AL.,

Defendants, Appellees.

Before

Breyer, Chief Judge,

Torruella, Selya, Cyr, Boudin and Stahl,

Circuit Judges.

ORDER OF COURT

Entered February 5, 1993

Appellant's petition for rehearing and rehearing en banc is denied.

By the Court:

FRANCIS P. SCIGLIANO, Clerk.

Letter to Cardinal Spellman, 11 January 1962 (before Discharge)

Lt. Gen. Caraway Letter, 11 July 1979

Memo (ABCMR), 11 March 1980

Executive Sec. ABCMR to Cong. Moakley, 23 September 1982

Letter of Cardinal Medeiros, 5 June 1982

11 January 1962

Your Eminence:

I hope this finds you in the best of health.

I thank you for asking Bishop Furlong of the Military Ordinariate to see me. This was accomplished last Monday, the 8th of January.

Bishop Furlong was very kind and considerate and I appreciate his counsel. However, the synopsis of the interview, "To win is to lose" left me unsatisfied.

At the risk of being called a bore and a nuisance, I asked again if I might see you, and Bishop Furlong stated that I could write to you.

I know that you are very busy and will understand if you cannot see me. However, I feel that I have been treated unfairly by the Army in the person of Lt. Gen. Paul Carraway, in that erroneous statements in my regard have been made, precipitous action was initiated as the result of an incident in the K of C Hall in Washington, D.C.

I wrote to Monsignor Marback on the 7th of

November, trying to explain my views on the past 18 months, with the hope that reconsideration might be given to my forced resignation.

I am on leave now at home and am due to report in Washington Jan. 20 for the final process of resignation. The military authorities can stop my resignation if the military ordinariate grants me permission to do so.

Whatever decision the Military Vicar reaches must and will be accepted humbly by me as an indication of Providence. I feel confident that I can serve God and the Church in whatever position I may be assigned wherever it may be.

I remain your humble and obedient servant.

Sincerely in Christ,

s/Edward D. Cowhig

4450 South Park Avenue

Chevy Chase, MD 20015

11 July 1979

Father E. Cowhig

Saint Jude's rectory

Main Street

Norfolk, MA 02056

Sir:

I am satisfied that I did not prepare a petter concerning you. Further, in as far as I can discover, no letter concerning you was prepared by any member of my staff or by an employee in my headquarters with or without my consent.

Yours truly

s/Paul W. Caraway

Lt. Gen. U.S. Army

On 11 March 1980 an informal contact by a member of the Board's staff was made with the Chief of Chaplains and a copy of the informal records maintained in that office concerning the applicant's separation was obtained. A copy is attached.

On 11 March 1980, based on a suggestion from the Chief of Chaplains Personnel Officer, a member of the Board's staff contacted the Office of the Chancellor of the Military Ordinariate, New York, N.Y., and was informally advised that provided the Board found it necessary the signature on the letter maintained in their files frm LTG Paul W. Carraway could be compared with the signature on the letter submitted by the applicant, also signed by LTG Carraway. In addition, an expression of concern on the part of the responsible parties in that office was discussed since the circumstances surrounding the applicant's separation were confidered a church matter; therefore, by necessity, confidentiality had to be maintained.

In effect, the responsible individual concerned expressed an opinion that, in his view, the subject letter should not be released outside the church.

(Handwritten MFR)

11 Apr 80

This was not seen by the Board.

(Initial GG)

SBMR COWHIG, EDWARD Application for
016-14-7279 Correction of
Military Records

OSA, SALL OSA, ABCMR 23 SEP 1982
ATTN: Ms. Locke 1E517 Mr. Goodman/ts/
79515

Following is in formation upon which to base a reply to Congressman John Joseph Moakley, in the case of the above named individual.

Copies of the Army Board for Correction of Military Records (ABCMR) actions pertaining to Father Cowhig's case have been reviewed. Based on the review, it appears that he has received fair, full and impartial consideration of the issues raised before the ABCMR. Father Cowhig has granted a formal review of his case on 14 August 1974, in which he personally appeared, with counsel, before the ABCMR. On 15 October 1974, the Under Secretary of the Army approved the Board's findings, conclusions, and recommendation that Father Cowhig's records be corrected to show

that he was involuntarily released from active duty on 23 January 1962. Since that time, Father Cowhig, personally or through elected officials, has been advised that after final adjudication further consideration of this case will be granted only upon presentation of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation and approval of the Secretary of the Army.

As other Representatives in Congress have been advised, the Board's decision to not grant a second hearing in Father Cowhig's case was not based solely on the letter purportedly written by General Carraway and which is now properly in the files of the Military Ordinariate in New York City. The decision was based on substantial evidence that he was a practicing alcoholic in 1961, who chose not to abstain from the abuse of alcohol after being hospitalized on several occasions for treatment. His abuse of alcohol resulted in his being relieved of his duties and

his being returned from overseas for treatment at the Walter Reed Army Medical Center.

The ABCMR is the appropriate avenue to obtain Secretarial relief of any perceived inequity or injustice. Please advise Father Cowhig if he possesses any material or relevant evidence which he has not submitted previously, he should submit it immediately to the Board for consideration. Otherwise, his administrative remedies have been exhausted.

s/John W. Matthews

Executive Secretary

ARCHDIOCESE OF BOSTON

2121 Commonwealth Avenue

Boston, MA 02138

June 3, 1982

Rev. Edward D. Cowhig

245 Chief Justice Highway

Greenbush P.O.

Scituate, Massachusetts 02040-0154

Dear Father Cowhig:

I have your communication of May 28, 1982, with material concerningyour suit against John O.Marsh, Secretary of the Army filed with the United States of America First Court of Appeals.

Certainly I support you in every way possible to receive justice and equity. SInce this matter is technical and already in the courts, I must consult with counsel. I note it is an emergency fromthe point of view of time and I shall try to obtain the proper advice in regard to your request for amicus curiae as described in your letter.

With every good wish and prayerful remembrance, I am

Devotedly yours in Our Lord

s/Cardinal Mediores

Archbishop of Boston

24 February 1964

Dear Mr. Speaker:

I am writing to you after a delay of some fifteen months and since my interview with your administrative assistant, Mr. Eugene Kinnally in Boston.

I have had the permission of His Eminence Cardinal Cushing Cardinal Cushing to contact you in an effort to straighten my affairs.

The Military Ordinariate in New York which Cardinal Spellman heads "ex officio" and which supervises the affairs of Catholic personnel in military service, requested my resignation from the U.S. Army based on a communication to them from Lt. General Paul W. Caraway, the IX Corps at Ryukan Islands Commander as well as High Commissioner of the Islands.

In a report to Cardinal Spellman, Msgr. Marback, the Chancellor, stated, "It is true that the priest does think that the charges were exaggerated, but we are <u>inclined</u> to believe that a

three star general would not send a letter of complaint unless he were certain of the facts."

I am not and cannot criticize the human judgment of the Military Ordinariate based on what they consider to be the "facts." However, I have constantly maintained and still do that this letter was in error, false, exaggerated, misleading, damning and damaging to my life as a priest, a chaplain, a citizen and as a man.

(I drink and have for some time, but this is a situation I think of accusations which "overkill.") I was assigned to a parachuting battle group with a combat mission during the Laos crisis (Top-secret) My immediate superiors have constantly regarded me as a superior troop chaplain and have gone so far as to say even in their final report that they would fight to get me in their commands in peace or in war.

I know from private correspondence that a draft letter was requested from the USARYSIS staff chaplain, Colonel Ed. Mize. This draft letter

when presented was rejected as not strong enough with the words to the effect, "We will write it ourselves." (This I presume meaning Chief of Staff Col. Finn and Lt. Gen. Carraway.)

I despise putting things this way because I have never considered myself or my welfare first, but the time has come to put things right and in their proper place. I cannot put this matter aside and forget it. I've tried turning the other cheek until my head is spinning. I want my record cleared. These false accusations expunged or compensated by counterstatements. I would like to go back in to the Army and serve the troops, preferably parachutists, anywhere. I have jumped with paratroopers on military operations more than any other chaplain, to my knowledge, in the history of airborne troops. I have constantly served with paratroopers for eleven years with the exception of ten months in Korea.

I said nothing leaving Okinawa because I was told by Chap. (Col.) Ed Mize and Col. R.E. McMahon

that I would merely go to the States and be reassigned. However, when I arrived at Walter Reed Hospital in Washington and interviewed by Dr. Franklin, my faith was questioned, my vocation challenged as selfish and this done by a man who did not know what the word "troops" meant in the military service and was ignorant of the fact that chaplains were paid. To top this Dr. Franklin was noticeably incensed that I did not prosecute my assailant in the K of C Hall in Washington and that I was at fault for even being there. I have made reference to this in my letter of November, 1962.

To repeat I was attacked in the K of C Hall in Washington the first night on leave from the hospital. I had twenty-five stitches taken on my face and hands at the Georgetown Hospital. I told the attendants there what had happened. Then the K of C director came in with a police sergeant asking me to keep it quiet because I was a priest, the location of the incident and that President

Kennedy (R.I.P.) had been made a Fourth degree member of the Knights of Columbus the week previous. The original report was folded over and a new entry made in the log book in the emergency room.

I am willing and able to present my testimony to you, Gen. Caraway, or anyone. I wrote to Gen. Caraway in July, 1962, but received no answer.

If I can settle the Army side of this situation and get a green light from them, then I may with the kind help of His Eminence Cardinal Cushing, arrange to present my cause to the Church authorities.

This is a complicated matter involving delicate matters and tender jurisdictions as well as public law.

I hope and pray that you will be able to help me in this matter.

Sincerely,

s/Rev. Edward D. Cowhig

DEPARTMENT OF THE ARMY

OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON, DC

April 6, 1964

Honorable John W. McCormack

Speaker of the House of Representatives

Dear Mr. Speaker:

This letter is in reply to your inquiry in behalf of Reverend Edward D. Cowhig, who communicated with you concerning his desire to return to extended active duty as a chaplain with the Army.

On 16 November 1950 Father Cowhig was appointed a chaplain in the Army Reserve, with the rank of first lieutenant. He entered on extended active duty on 2 January 1951 and was promoted to the rank of captain, Army of the United States, on 25 June 1954. On 19 December 1956 he was appointed a captain in the Regular Army, with a date of rank of 2 January 1955. On 7 November 1961, he submitted his unqualified resignation

from the Army, which was approved on 27 November 1961 with final separation effective 23 January 1962.

It is true that Chaplain Cowhig was requested by His Eminence, Francis Cardinal Spellman, Chaplain Cowhig's ecclesiastical superior, to submit his resignation. Chaplain Cowhig acquiesced, though reluctantly. The record shows that if Chaplain Cowhig had not tendered his resignation, the Military Ordinariate, which Cardinal Spellman heads in his capacity as Military Vicar for Catholic chaplains and military personnel and their dependents in the United States Armed Forces, would have withdrawn its ecclesiastical endorsement of the chaplain. Without such an endorsement a chaplain may not exercise his spiritual duties with the military.

The immediate or proximate reason for the action was a report from Lt. General Paul W. Carraway, Commanding General, USARYIS/IX Corps and High Commissioner, Ryukyu Islands, to Cardinal

Spellman with regard to a series of incidents in Okinawa, where Chaplain Cowhig was assigned. Those incidents involving Chaplain Cowhig were in the nature of repeated alcoholic intemperance, a trait most unacceptable in any Army officer and certainly not to be countenanced in a chaplain. As a result, Chaplain Cowhig was unable to perform his duties, became despondent, and had to be hospitalized on three occasions. Finally, he was evacuated from Okinawa to Walter Reed Army Medical Center, Washington, DC, where he submitted his resignation after a short period of hospitalization.

Chaplain Cowhig's military career was outstanding, aside from the deficiency noted above. While he claims that the charges made by Lieutenant General Carraway were exaggerated and were due to a misunderstanding, a review of the chaplain's complete record reveals that the same charges were made by his immediate commanding officer and by the officer who endorsed his

efficiency report. Further examination shows that happenings in Okinawa were not isolated incidents; there were similar lapses in Germany in 1956. Accordingly, it was concluded that there had developed in this case a pattern of conduct not in keeping with the high estate chaplains have and must have in the armed forces.

Since Chaplain Cowhig's resignation two years ago, the Chief of Chaplains has determined on several occasions, and as recently as this past week, that the Military Ordinariate will not issue an ecclesiastical indorsement for the return of Chaplain Cowhig to extend active duty as a chaplain with the Army. In this decision the Chief of Chaplains concurs.

I trust this information will be of assistance to you in your reply.

Sincerely,

s/ Fred C. Weyand

Inclosure Major General, GS

Chief of Legislative Liaison

THE SPEAKER'S ROOMS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC

April 14, 1964

Rev. (Fr.) Edward D. Cowhig

245 Chief Justice Cushing Highway

Greenbush, Massachusetts

Dear Father Cowhig:

The Speaker had your case thoroughly investigated by the Secretary of the Army, and I am enclosing herewith the report sent to the Speaker by Major General Fred C. Weyand. I am very sorry that the information it contains is not more favorable to you, but you may be assured that the Speaker did everything he could in your behalf.

With kindest regards, from the Speaker and myself, I am

Sincerely yours,

s/Eugene T. Kinnally

Administrative Assistant

P.S. I am returning the enclosures which you sent to the Speaker as you may want to keep them in your file.

ETK

Edward D. Cowhig

016-14-7279

Greenbush, MA 02040-0154

February 14, 1986

RE: Docket-AC77-01666E

Index No. -111.0

Army Board for Correction

of Military Records

Room 1-E-517

The Pentagon

Washington, D.C. 20310-1803

Dear Sirs:

I am applying for consideration "de novo" based on new evidence not previously considered in accord with the applicable regulation AR 15-185 or whatever regulation applies to my claim and case.

I have constantly and consistently asserted that my separation from the U.S. Army was improper and unjust, illegal and fraudulent, consequently null and void. Not only was my severance unjust but was in contrast and in

violation of existing Army regulations for a Regular Army officer in addition to a violation of my Constitutional rights. I was denied due process of law and was the subject of prejudice, discrimination, hasty and arbitrary judgments based on libel and slander which have seriously affected my career and profession. I demand to be made whole. I seek the restitution of my Regular Army Commission with all appropriate adjustments in rank and privileges. I demand to be restored, "Nunc pro Tunc", "Now for Then."

I have suffered a great deal from this nefarious action which was based on poisonous lies and concoctions of disturbed personalities. I know it is very difficult to prove the latter but that is my conviction.

I am enclosing documents lately obtained from five medical doctors which to me indicate medical malpractice. I am enclosing documents from three lawyers who have analyzed my testimony of 1974 and 1983, asserting that there is no conflict or

contradiction in my testimony, as was alleged in the minority report of 1984.

I am also including a document from Dr. Hurwitz, a psychologist at Boston College, who clearly indicates the injustice which has been perpetrated.

I ask you to especially note the memo of Mr. Gibson of the ABCMR dated 11 April 1980, which incidentally was not presented to the Board. The notes he mentions, as obtained from the Chief of Chaplains' office, indicate the prejudgment of that office even before I left Okinawa. I call your attention to the line above and before the deformation - "evacuated by air 6 Oct. 1961, etc...." (To be RAD) - (TWX CGUSARYIS.)" They had already made up their minds!

Unfortunately the TWX from the Pentagon to the Commanding General of USARYIS cannot now be found by the Access and Release branch of the Adjutant General, even after several searches and even, when I gave them the reference number of the

original message. DA-MSG-23416.

I had hoped to obtain this message from DA to further evidence the arbitrary, impetuous maneuvers of the Chief's office and its counterpart in New York. Unfortunately also, I cannot evidence the telephone calls from Okinawa to Washington to New York which played their part in disseminating the poison.

I call your attention also to the memorandum from the office of the Military Ordinariate in New York dated 21 Sept. 1961, in which the Chancellor in that office is asking the Deputy Chief of Chaplains -- "if he wanted me to withdraw the endorsement."

I again call your attention to the fact that the above mentioned Chancellor demanded my resignation <u>after</u> the receipt of Lt. Gen. Carraway's spurious letter, and <u>before</u> any medical diagnosis, no matter how flawed the latter was.

I claim that the action of the ABCMR of 1984, and the decision by Mr. Wm. D. Clark of 29 March

1984 to be arbitrary, in disregard of the facts, and furthermore injurious to me, particularly in that I was alleged to have made, under oath, contradictory and conflicting statements. This attacks my honor and reputation, so I cannot and will not let it stand.

The action by the Board in 1974, in citing #3785 of Title 10 U.S.C. is another example of injury. This note is still on my discharge papers, and though most people would not know what it signifies, nor did I for many years, I cannot let it stand. It is manifestly clear from the oral testimonies of my C.O. and exec. officer as well as the written testimony of all the 503rd Airborne staff that my performance of duty was of the highest standard.

I have previously sent you letters indicating that the spurious letter of Lt. Gen. Caraway, 11 Oct. 1961, was not properly prepared by the Staff, as is the opinion of the Exec. Sec. of ABCMR. (Note Col. John Finn, the reviewing officer of my

last efficiency report checking the box -- item 19 -- "my review indicates no further action."

Again, I call your attention to Bishop Dimino's letter 28 Aug. 1984 asserting that they in 1961 received a COPY of the Carraway letter, and not as the Exec. Sec. of ABCMR opines that they were the original recipients and therefore the legal custodians of that document. It was addressed to the Chief of Chaplains and for years and years I have been denied access to it.

Enclosed are the documents above mentioned.

Sincerely,

s/ Edward D. Cowhig

P.S. I am still able and willing to serve. EDC

23 May 1986

Cowhig, Edward D.

016-14-7279

Reverend Edward D. Cowhig

Greenbush, Massachusetts 02040

Dear Reverend Cowhig:

This is in reference to your recent letters to the Secretary of the Army, Principal Deputy Assistant Secretary (Man power and Reserve Affairs), Congressman Gerry E. Studds, and to your letter of 29 April 1986 concerning the review of your application for correction of military records.

Although this is repetitive of information previously furnished to you, I must again state that in the enactment of Section 207 of the Legislative Reorganization Act of 1946, now codefied in 10 U.S.C. 1552, the Congress vested authority for the correction of Army records in the Secretary of the Army, and he may act only through the Board for Correction of Military

records. The provisions of this law are clear, and do not include any authority for review of your case by any other officer or official of the Executive Branch of the General Government.

As you know, your case has been reviewed on numerous occasions, to include two formal hearings, in connection with your desire for relief through this Board. You were provided ample opportunity to furnish or present to the Board any evidence you desired for its consideration during the course of these hearings. The information, which you have submitted subsequent to your last hearing, has been carefully studied and the content appears to be substantially similar to information previously submitted and considered by the Board. Accordingly, it has been determined that no new relevant information has been presented to warrant reopening of your case. "New and material evidence" if considered to be evidence, which if previously evaluated by the Board, could

reasonably be expected to have resulted in a finding other than that rendered as a result of the prior review of your case. Evidence, which is repetitious or based on emotion or which tends to elaborate on facts previously considered by the Board is not deemed to be new and relevant material evidence.

The Correction Board has a considerable backlog of applications, the majority of which have not received an original review and consideration; as opposed to your case, which has been considered and reconsidered on many occasions. While your concern and desires are recognized, it is unfair and discriminatory to expend time in responding to your repeated requests which are duplicative in nature of what you have asked for previously.

Therefore, I must respectfully inform you that, in response to any future correspondence, you will be furnished a copy of this letter.

You are again reminded, if you desire additional review of the Board's action, of your right to institute action in a Federal Court of competent jurisdiction.

Sincerely,

s/Karl Bielenberg

Executive Secretary

cc: Honorable Gerry E. Studds

DOCUMENTS REJECTED BY THE ABCMR IN 1986 AS "REPETITIOUS, BASED ON EMOTION"

Dr. Roark, MD, 4 March 1986

Dr. Rohde, MD, 28 May 1985

Bishop Dimino, 28 August 1984

Exec. Sec. ABCMR, 29 June 1984

Army Intelligence (DAMI), 7 August 1984

Col. (Ret.) McMahon, 30 March 1985

Atty. Loring, undated, 1985

Atty. Roache, 22 April 1985

Col. (Ret.) McCoid, 10 July 1985

Atty. DeVico, 10 September 1985

Dr. Hurwitz, PhD, undated, 1985

Dr. Clark, MD, 24 October 1985

Dr. Kudarauskas, MD, 6 November 1985

* Dr. Dowling, 28 July 1986

Dr. Kilfoyle, MD, 6 February 1985

* Not sent to ABCMR at that time.

4450 South Park Avenue

Chevy Chase, MD 20015

11 July 1979

Father E. Cowhig

St. Jude's Rectory

Main Street, Norfolk, MA 02056

Sir:

I am satisfied that I did not prepare a letter concerning you. Further, insofar as I can discover, no letter concerning you was prepared by any member of my staff or by an employee in my headquarters, with or without my consent.

Yours truly,

s/Paul W. Caraway

Lieutenant General

U.S. Army

5504 Westbard Ave.

Bethesda, MD 20816

March 4, 1985

Fr. Edward D. Cowhig

Greenbush, MA 02040-0154

Dear Father Cowhig:

Your recent phone calls reminded me that I had not responded to your request that I review the findings of the Army Board for Correction of Military Records (ABCMR) on its September, 1983 Hearing of your application for correction of your military records. As you know, I testified before the ABCMR on your behalf on September 21, 1983.

I have completed a review of the material you forwarded to me, in particular the "DISSENT" to the majority of opinion of the ABCMR, which begins on page (6) of the document titled "PROCEEDINGS." I have also reviewed my notes of my examination of you on September 7, 8, and 19, 1983, and recalled, to the best of my memory, my testimony before the

ABCMR. (Please note that I have not seen a transcript of my testimony on that occasion.)

I have read nothing in my review that would persuade me to alter the opinion I presented to the ABCMR in September, 1983: namely, that your abuse of alcohol during your tour of duty on Okinawa was secondary to a neurotic disorder, characterized by mixed depression and anxiety symptoms; that you had not been provided adequate treatment for the underlying neurotic disorder; and finally, that had you been treated adequately for the underlying condition it would have been reasonable to expect that your abuse of alcohol would have subsided.

In re: paragraph (f) of the "DISSENT," I dispute the implication that my examination, findings, and conclusions were biased by my retention by Mr. Neil Kabatchnick, your attorney, in connection with his preparation of your petition to the ABCMR. Further, I would question the allegation in the "DISSENT" that my

examination, findings, and conclusions are invalidated by the passage of some twenty years since the episode on Okinawa.

I trust that the foregoing is responsive to our request, and that the delay in my response has not inconvenienced you. I hope that your life has gone smoothly since we last met, and that you continue to enjoy satisfactory health.

Sincerely,

s/George W. Roark, MD

cc: Neil B. Katatchnick, Esq.

(Original Prepared May 28, 1985)

SUBJECT: Review of Medical Records

TO: Army Board for the
Correction of Military
Records

RE: Edward D. Cowhig
Service No. 075056
S.S. No. 016147279

Gentlemen:

This is to certify that I have examined the Army medical records of Chaplain Edward D. Cowhig to determine whether factual medical evidence exists in these records to support a diagnosis of alcohol disease or its stigmata. In performing this review, I paid particular attention to laboratory data, nurses' notes, and the actual reported observations of those who doctored or nursed Chaplain Cowhig during his times of hospital confinement. The following findings are apparent:

1. From records presented to me, Reverend Cowhig appears to have been initially hospitalized for the first time during his tour of duty in the Army, except for a displaced cartilage in his knee on July 19, 1960, after approximately ten years of military service. At that time, he is described as having been admitted as 0230 hours, "No evidence of A or N," The nursing notes how that he was cheerful, well-oriented, and appeared to be his usual self. A flocculation test of liver activity was slightly abnormal but not generally considered to be outside of the normal range. The retention of a dye (BSP) at 5-8%, again, is not outside the normal range, and, while the excretion rates ordinarily may have been expected to be slower, at this time, he was complaining of Shigella, which no doubt would involve some deterioration at least temporarily of liver function, is the most likely one I could determine from the presenting data of this admission. No

etiology was specified for the alleged fatty liver degeneration at the time of that admission.

2. The next Army Hospital admission was on 2 Feb. 1961 "due to anxiety, tremulous, insomnia." There was no GI symptoms reported at that time. According to the physical examination there was an elevation in blood pressure of 154/90 and the liver is said to be palpable three fingerbreadths below the right costal margin. Significantly, it is noted that these is no icterus, no particular muscle atrophy, and no "spiders." Laboratory studies, including a flocculation test again and a repeat of the BSP, were essentially unchanged from the previous studies, and, again, all within normal limits.

The hospital course, narrated in the Discharge Summary, repeats that the patient was symptomatically treated with paraldehyde, when, in fact, medication records from that hospitalization show that 38 cc. paraldehyde was given over a 24-hour period. He was never disoriented or

delirious, and vital signs were stable throughout. This is most consistent with anxiety of his just having had bad news rather than alcohol withdrawal. Of even more significance are the doctor's orders largely related to liver tests and vital signs (bital signs were normal throughout the hospital stay and I expect that the initial complaints of anxiety and nervousness are responsible for the elevated systolic pressure at the time of admission. Apparently, Rev. Cowhig rested in the hospital for some 8 days, during which time he did receive 2 doses of chloral hydrate 0.5 grams at bedtime, and there is no further evidence during this hospitalization that any attempt was made to measure his serum alcohol concentration at the time of admission or that he was approached by any alcohol counselor during the time of his stay there, or that the subject of his drinking is made the matter of any note written by any nurse of doctor during the hospital stay. there is a note that psychiatric consultation was

requested, but apparently when seen briefly by the psychiatrist on 7 Feb. 1961, Lt. Col. Hannum only sought to speak with the attending physician and makes no mention in his note about the patient's mental status, so that I do not believe the mere event for requesting psychiatric consultation should be considered since no report is available. Apparently, after that hospitalization, Rev. Cowhig was returned to active service duty.

3. On 30 March 161, there is the report of a routine annual medical/physical examination, again bearing the finding of "hepatomegaly," but when summary of defects and diagnosis is stated, the only diagnosis is coded as 2790--obsety; and the only recommendation made at that time was weight reduction. Since this examination was proximate to the time of other hospitalization, it is both surprising and puzzling that no mention is made of the patient's alleged alcohol abuse, nor is any significant update brought about during the annual physical, leading me to believe that it was simply

not a problem, or at least it was not a problem affecting his military performance.

4. In reviewing the above data, in which Rev. Cowhig is recorded as having been admitted to hospitals with symptoms of anxiety, tension, and insomnia, with no evidence of alcohol or narcotics, I do note that there is a curios report during his Feb. 1961 hospitalization which alleges that he "apparently has not reported to work for 4 days." This is, indeed, curious as a footnote late in the progress records of the hospital, and I have no idea why it would be originally included in a doctor's progress note, since it appears to have no bearing upon the patient's condition and it does not state or even attempt to explain why this material was placed in the chart in this matter at this time, when I would certainly expect such material to be part of the Admissions Note. It is noted as hearsay and should remain so. This alleged absence was dereliction of duty. It is out of place and of no consequences. I could

not conclude, therefore, that it was relevant to the factual discussion of Rev. Cowhig's state of health or his putative substance abuse.

5. He was hospitalized again 18 Sept. 1961 at 2315 hours; no evidence of A or N. This admission for the first time entertains a diagnosis of "Alcoholism, acute and chronic, moderate; manifested by excessive alcohol intake under stressful situations." Stress--minimal; normal military duties. Predisposition--moderate, or long history of excessive alcoholic intake. Medical impairment for duty--none. Specialized treatment...again there is no evidence from the medical record that objective examination could have supported this diagnosis and certainly there was no blood alcohol level. Despite the stated diagnosis of "acute alcoholism," there is not even any remark that the patient smelled of alcohol at the time of admission, and this is very unusual among military medically-trained personnel who almost automatically report such observations. He

was not considered medically impaired for duty.

6. From Okinawa, Rev. Cowhig was transferred to the Walter Reed General Hospital on 16 October 1961. It appears at this time that the diagnosis of alcoholism, chronic and acute, had simply been repeated from old records. I must say that acceptance of such a diagnosis without supporting data is difficult for me to believe on the part of a hospital with the reputation of Walter Reed General; however, it does appear that this is the case. Significantly, in the "Summary" prepared by Gerald S. Franklin, Capt. MC, there is no specific alcohol or drug history taken. Here again, it is more likely from examining the objective evidence, that Rev. Cowhig was suffering from an acute anxiety disorder or depressive disorder. There is no evidence at all, which is indeed surprising, that alcohol was even a contributing factor in these episodes. Anxiety most certainly would have occurred in his life whether or not he was subject to bouts of substance abuse. In light of the lack

of quantitative factual laboratory data, it is puzzling that a patient who was initially diagnosed as having "hepatomegaly and fatty degeneration of the liver," a condition which is almost certain to be fatal, and which certainly would have been exacerbated by the alleged further drinking bouts, by the time he reached Walter Reed that diagnosis had disappeared entirely from his medical records. It would appear to have been convenient to label Father Cowhig as an alcoholic, rather than consider any other differential for the anxiety condition with which he presented.

I also note that, on page 3, Register No. 6133-052, the notion "EPTS" appears for the first time. Again this is not documented elsewhere in any record known to exist prior to Father Cowhig's admission to the Service (11 years prior to this note), he would have been refused admission to the Service in the first place, or, if he had willingly concealed a pre-existing alcoholic condition, surely this would be very well

documented for determination of service-connected benefits if for no other reason.

Again, from the Walter Reed admission, in Capt. Franklin's note, "The hospital course was at all times compliant with ward routine and exhibited much enthusiasm and encouragement for others in-ward athletic activities. He was angry and impatient about the circumstances of his hospitalization, continuing to be more comfortable projecting blame for his plight rather than accepting responsibility for it. However, superficial recognition of the problem led to a resolution of "abstinence." Despite this description of his compliance with work routine, and his enthusiasm, his present condition is described as correspondingly guarded prognosis for successful adjustment in the military. I find it difficult to move from the facts presented above to the conclusion presented below, since there is a total lack of corroborating information, and remarkably there is no psychological testing,

which I believe must be present in order to make such a grave prognosis in the light of an absolutely exemplary 10 year service record prior to the onset of these stress-related complications, and I do not believe that the label of alcoholism can be, or ever was, justified by anything known to me.

It would not have surprised me were Father Cowhig to freely admit to consumption of alcohol under stressful situations. I would, however, expect that those attending him, especially his physicians, and especially those battle-trained, would have been sensitive to fatigue, stress, and strain reactions that are often seen in those given special command and privileged to special information in situations which are constantly changing. I would think that if his commanding officers and those around him had been more supportive of his personal situation, they would not have fixated on whatever alcohol intake he may or may not have consumed and that a shabby outcome

such as this would have indeed been prevented. Or at least I would hope that modern, conventional military medicine would have recognized the true nature of his problems and offered him the support that he needed; perhaps the guidance to assume his responsibilities less seriously or perhaps to avoid extending himself into areas where he was over-stressed and fatigued.

I doubt that further medical information is likely to come to light which could modify my opinion, and I would be glad to stand before any board or tribunal and discuss these results.

With all best wishes,

Sincerely yours,

s/William A. Rhode, M.D.

Member of American Academy

of psychiatry and the Law

Board Certified, Psychiatry and

Neurology

Clinical Instructor in Psychiatry,

Col. Harvard Medical School

Military Ordinariate

1011 First Avenue

New York, NY 10022

Office of the Vicar General

28 August 1984

Secretary of the Army

Room 3E718, The Pentagon

Washington, DC 20310

Dear Sir:

I am writing with regard to:

SUBJECT: Edward D. Cowhig

(016-14-7279)

245 Chf. Jus. Cushing Hwy.

Greenbush, MA 02040-0154

REFERENCES: Army Board for the

Correction of Military

Records

21/26 September 1983

Docket 77-01666G

Index #111.01,134.01

The Reverend Edward Cowhig, a former Army chaplain, has written to this office in connection with his case being considered by the Army Board for the Correction of Military Records (Date: 21 and 26 September 1983, Docket Number AC77-01666G, Index Number 111.01, 134.01).

He has sent us the transcripts of the 1974 and September 1983 Hearings. He has also sent to us a copy of the proceedings and the decision.

Basically, Father Cowhig feels that an injustice has been done to him. He has spent a great deal of time and energy in attempting to rectify this situation.

For clarification purposes, this office would like it to be noted that the Military Vicariate in 1961 requested Father Cowhig to resign his commission in the Army principally because of a copy of a letter, believed to be authentic, sent from Lieutenant General Paul W. Caraway to the Chief of Chaplains continuing adverse comments concerning Father Cowhig.

It is now our understanding that the letter from General Caraway cannot be authenticated, that there is no proof that it was actually written by General Caraway, and that General Caraway himself has denied having written the letter (Appendix B, page 139, Sup. Ct. Brief, Exhibit 55A, 1983 Hearing).

Because this letter cannot be authenticated, we request that the Army Board for the Correction of Military Records reconsider, and perhaps correct, the status of the Reverend Edward D. Cowhig. If his age were not a barrier and if he received permission from his religious superior, this office would not oppose his return to active duty as chaplain.

We express our appreciation to the members of the Board for the time and energy already expended on this situation. We are hopeful that they will be willing to review the case again.

Sincerely yours,

s/Joseph T. Dimino, Vicar General

DEPARTMENT OF THE ARMY

Board for the Correction of Military Records

Washington, DC 20310

19 June 1984

SFMR

Reverend Edward D. Cowhig

245 Chief Justice Cushing Highway

Greenbush, Massachusetts 02040-0154

Dear Reverend Cowhig:

This is in further reference to your letter under the Freedom of Information Act, wherein you request a complete and entire copy of all records maintained by this Board in the consideration of your case. This is also in reply to your letter to the Honorable Edward M. Kennedy, who has requested that the Board respond directly to you, in regard to your inquiry to his office.

Pursuant to your request, please find enclosed a complete copy of the entire file maintained by the Army Board for Correction of

Military Records concerning the considerations of your case.

As the Honorable Paul E. Tsongas was advised on 6 June 1984, contrary to your contention, the minority of the Board's members, who recommended that your application be denied, did not base their dissent largely on a coy of a letter, the authenticity of which you challenge. The Board's minority decision was based on substantial, undisputed evidence that you were a practicing alcoholic in 1961 and chose not to abstain from the abuse or alcohol resulting in your being hospitalized on several occasions for treatment. Your abuse of alcohol also resulted in your being relieved of your duties and returned from oversees for medical treatment at Walter Reed Army Medical Center. The evidence before the Board further revealed that subsequent to discharge from the Army in 1961, you continued to abuse alcohol which resulted in several more hospitalizations and the loss of a church parish.

After 20 years, the Board is unable to ascertain why the original letter/document from Lieutenant General Paul W. Caraway is not currently in military files. However, it would appear that the original letter/document is or was in the hands of your Military Ordinariate in New York. You have previously stated that you saw a copy of the letter in your military files during your stay at Walter Reed Army Medical Center in 1961. Because the letter was not critical in its determination, the Board made no attempt to determine its authenticity. However, the Board members were of the opinion that if General Caraway did not sign the letter, it was properly prepared and signed for him by his staff.

Concerning your contention to Senator Kennedy that you have been denied the opportunity to disclose classified information which may help your case, you have been advised on numerous occasions that you had the right to present such information to the Board for consideration. In

two formal hearings, in which you appeared in person, and with counsel, you presented no such evidence for the Board's consideration.

Sincerely,

s/John W. Matthews

Executive Secretary

Enclosure

CF: Honorable Edward M. Kennedy

DEPARTMENT OF THE ARMY

Office of the Assistant Chief of Staff for Intelligence

Washington, DC 20310

August 7, 1984

Freedom of Information Office

Mr. Edward D. Cowhig

Greenbush, Massachusetts 02040-0154

Dear Mr. Cowhig:

This is in response to your letter of July 21, 1984, in which you request more information about the classification of information that you possess.

Dependent upon the state of international affairs, the information you possess is classified from CONFIDENTIAL to SECRET. Unfortunately, due to operations security constraints and the potentially very sensitive nature of the information, I am unable to provide any further details at this time. I am sure that you

understand the national security considerations involved.

Once again, I thank you for your cooperation in protecting information that you possess as a result of your military service.

Sincerely,

s/Anthony J. Gallo, Jr.

Colonel, General Staff

Director of Counterintelligence

AFFIDAVIT OF

COLONEL ROBERT E. McMAHON, U.S.A. (RTD)

I, Colonel Robert E. McMahon, U.S.A. (Rtd), 082-32-1341, commander of the 2nd ABN/503rd Infantry from May 196-0 to July 1962, submit the following comments concerning the Minority Report (Dissent) of the Army Board for the Correction of Military Records, dated 21 and 26 September 1983, in the case of Father Edward D. Cowhig, 016-14-7279:

Reference par. (c) of the Minority Report:

I know of no occasion where "the applicant's abuse of alcohol was affecting his performance of duty and tarnished his image as an officer and Army Chaplain." On the contrary, he carried out all his duties in an exemplary manner. His character was impeccable; his conduct was flawless; he was admired and respected by all who knew him.

Further, I know of no time wherein Father Cowhig "failed to go to work for four days because

of being incapacitated due to abuse of alcohol." As far as I know, Father Cowhig never avoided, shirked, religious duty. On the contrary, he was always on duty with his troopers, constantly working with them; planning, creating, and implementing ways to make them better soldiers.

Additionally, "that his drinking problem was a matter of record in an Officer Efficiency report," The Minority Report was incorrectly based on part on the Officer Efficiency Report (OER) for the period 13 July 1961 to 1 October 1961 that I endorsed on Father Cowhig wherein I misjudged his illness. This OER was misleading, and did not present the facts accurately. I am certain that the Majority of the Army Board for the Correction of Military Records felt that the OER should have been voided and expunged from Father Cowhig's record for they recommended that he be restored to duty and promoted to the grade of Major. I felt that the time of notification and dispatching the OER was unusually short. I failed to give the OER

the in-depth analysis required of such an important document affecting the career of Father Cowhig. I prepared the OER primarily from the medical reports of 27 July 1960 and 24 February 1961, and in addition, from the recommendations of Lt. Col. Hannum, Chief of the Neuropsychiatric Service at Camp Hue Hospital (Okinawa). Any reference or inference that I made to Father Cowhig concerning alcoholism was incorrectly derived from these two medical reports, discussions with Lt. Col. Hannum, and Father Emmett Walsh, Senior Catholic Chaplain, Headquarters, U.S. Army Ryuku Islands/IX Corps (Okinawa). I erroneously came to the conclusion that Father Cowhig attend a group therapy meeting at the hospital on Okinawa, which I was led to believe was going to be a session conducted by an experienced medical person. Instead, the moderator was a private or corporal from the hospital.

In my opinion, Lt. Col. Hannum incorrectly

diagnosed Father Cowhig's medical problem. His emphasis was on alcoholism, and not the real problem, namely, that Father Cowhig was suffering from a severe case of anxiety and hypertension that required immediate expert medical treatment. If Lt. Col. Hannum had emphasized the fact that Father Cowhig's primary problem was severe hypertension, and not alcoholism, my OER would have brought that fact out, and placed it in proper perspective. With this knowledge, I would have endorsed PART VI (Over all Demonstrated Performance) under (b) of the OER as EXCEPTIONAL with a value of 90, instead of (e) EFFECTIVE with a value of 40.

Reference par. (D) of the Minority Report:

As I mentioned above, Father Cowhig's primary medical problem was severe hypertension encompassing high blood pressure and great emotional tension. His many hospitalizations should have properly identified this number one cause of his medical problem; especially, Lt. Col.

Hannum when he first saw Father Cowhig in February 1961. He should have insisted that Father Cowhig be immediately be evacuated to CONUS for expert medical treatment. The medical profession was negligent in permitting Father Cowhig's condition to worsen, and to drag on for another year; worse of all, allowing Father Cowhig to be labelled an alcoholic. Father Cowhig knew that his real problem was extreme anxiety and hypertension, that he needed expert medical help, and that group therapy could not help him. Consequently, their outward impression that he half-heartedly attended group therapy session on Okinawa.

Reference par. (e) of the Minority report:

This paragraph gives the wrong impression about Father Cowhig received proper medical treatment and psychiatric evaluation while on active duty, that he was seen and examined by two qualified psychiatrists who properly diagnosed his alcohol related problems.

The two psychiatrists were undoubtedly, Lt. Col. Hannum (February 1961 in Okinawa), and Captain Franklin (October-November 1961 at Walter Reed Hospital). Judging from my contact with Lt. Col. Hannum, I would say that he made a very cursory and meaningless evaluation of Father Cowhig's condition. According to Father Cowhig, his meeting with Lt. Col. Hannum in February 1961 was neither an examination, or treatment or evaluation. The meeting took approximately 15 minutes; certainly not sufficient time for a thorough diagnosis of Father Cowhig's medical problem.

I noticed in the record of the Army Board for the Correction of Military Records that Captain Franklin was not an expert in psychiatry having recently or just completed his training program in psychiatry at Kaiser Found., San Francisco, Calif. in June 1961, and began his residency at Walter Reed General Hospital, Washington, D.C. in September 19651. (Exhibit #2 at 1983 HEARING);

further, that he was not a Board-Certified psychiatrist. As a result, Captain Franklin lacked the proper experience necessary to treat Father Cowhig in October 1961 when Father Cowhig was his patient. Hence, there is one psychiatrist attending Father Cowhig, Lt. Col. Hannum who did not conduct a proper medical evaluation in February 1961, and the other, Captain Franklin, had just begun his residency at Walter Reed Hospital in September 1961.

I also direct your attention to the fact that Father Cowhig was told to resign on 31 October 1961, and the diagnosis of his medical case prepared by Captain Franklin was made on 6 November 1961, merely restating the diagnosis made in Okinawa. For all practical purposes, Father Cowhig's career in the Army terminated on 31 October 1961 without the Army even considering Captain Franklin's report, the second so-called qualified psychiatrist.

It is important to note that the 2nd Airborne

Battle Group/503rd Infantry was an elite parachute combat team strategically located on Okinawa for possible military operations into South East Asia; one such mission was assigned to the unit in January 1961, and was later canceled. Father Cowhig as a select member of this organization had access to security information on a "need-to-know" basis. No one, outside of a few select individuals, knew the gravity of the situation that confronted the 2nd Airborne Battle Group/503rd Infantry at that time.

As a result, father Cowhig convinced that his troopers would soon be committed to combat, with the strong possibility that many soldiers might be lost, feverishly stove to have them make their peace with God, beforehand. To him, his task seemed insurmountable, and most difficult, for time was short. His men did not know of a probable real combat mission. Frustrated and under severe mental pressure, Father Cowhig worked incessantly to get his job done. Finally, after

three or four sleepless nights through sheer mental and physical exhaustion, he voluntarily checked into the hospital on Okinawa on 2 February 1961, suffering from complete exhaustion and severe anxiety.

Thus we see that Father Cowhig with security restrictions handing over his head could not make the medical or his ecclesiastical superiors aware of the difficulties of accomplishing his mission; nor could they fully understand the mental anguish that Father Cowhig was suffering.

To an observant psychiatrist, the warning signs concerning Father Cowhig's condition were there indicating medical treatment. However, they were ignored. Instead, alcoholism was listed as the cause of Father Cowhig's problem.

when Father Cowhig left Okinawa for CONUS in October 1961, I thought that he was returning for medical treatment. I thought that he would return to the Battle Group. I had no idea that he was being forced to resign from the U.S. Army. If I

would have known that, I would have fought vigorously to retain him on active duty.

In short, the whole scenario of Father Cowhig's tragic career from February 1961 to his involuntary resignation is racked with errors, misunderstandings, innuendoes, and prejudice.

I am positive that if Father Cowhig had received immediate medical treatment after his first hospitalization in July 1960, or the latest in February 1961, that he would have fully recovered and been returned to active duty.

I strongly recommend that the injustice that has been done against Father Cowhig while in the U.S. Army be rectified as advocated by the Majority Report of the Army Board for the Correction of Military Records.

s/Robert E. McMahon

Colonel, U.S.A. Rtd.

1760 Avenida del Mundo

Coronado, CA 92118

Dated 30 March 1985

ROBERT D. LORING
Attorney at Law
50 Cole Parkway
Scituate, Massachusetts 02065
Office (617) 545-1300
(617) 545-1303

Summary and Opinion

Case of Edward D. Cowhig

016-14-7297

Dear Father Cowhig:

Per your request, I have carefully reviewed all of the testimony from the August 1974 hearing on your case consisting of pages 1-59. In addition, I have reviewed the transcription of the hearing held in September 1983, from pages 10412, which includes the testimony of Colonel McCoid; C.S.M. Vincent D. Roegiers; George W. Roark, Jr., M.D.; Colonel Robert E. McMahon; Rev. Patrick F. Healy; Mr. Charles J. Brennan; and Edward D. Cowhig. I have also reviewed the proceedings of the Board as a result of the 1983 hearing, pages

1-5, and in addition, the dissent on pages 6-8, and the March 29, 1984 letter from the Department of the Army signed by William D. Clark, Assistant Secretary, and his conclusion dated March 29, 1984.

It is my opinion based on the 1974 testimony and the 1983 testimony, that the majority opinion rendered by the Department of the Army Board for the Correction of Military Records, is just, fair, and reasonable. It is also my opinion that the dissent of members William D. Masters, Jr. and Jack E. Hobbs, it totally unreasonable, unsound, and as a result of faulty logic and conclusions.

Quite frankly, it is difficult for me to understand the dissenting decision in light of all evidence that was provided at both hearings. In addition, I fail to understand how William D. Clark, Principal Deputy Assistant Secretary, could, in good faith, reject the majority opinion of the Board and opt to adopt the minority opinion. Quite frankly, I am of the opinion that

the minority opinion was accepted for financial reasons only in that by adopting the minority opinion, the United States Government would not have to pay you the pension for which you would have been qualified had the majority opinion of the Board been adopted.

In reviewing the dissent from the majority of the opinion of the Board as a result of the 1983 testimony, I fail to see how the dissenters can find numerous conflicts in the testimony. It is interesting to note that in paragraph A the dissenters comment on numerous conflicts between the 1974 and 1983 testimony and yet, although they speak of numerous conflicts, they do not point out even one conflict in paragraph A.

The dissenters state in paragraph B that the applicant was an alcoholic an had a severe alcohol problem at the time of his resignation from the Army. I fail to see how they can determine that the applicant was an alcoholic or had a severe drinking problem, especially in view of the

testimony of the applicant's immediate commanding officer, Colonel McMahon, and in view of the testimony of the other witnesses for the applicant. I find no evidence whatsoever in the testimony of Colonel McCoid and Colonel McMahon, nor in the testimony of Charles J. Brennan who was the applicant's driver while in Okinawa, that would lead any reasonable person to conclude that the applicant was an alcoholic nor that he applicant abused alcohol. Quite the contrary, all the evidence submitted by way of testimony from those closely associated with the applicant and those in direct command of the applicant, one led to the almost inescapable conclusion that the applicant was anything but an alcoholic or had an alcohol induced problem. I would point out that the applicant in his 1974 testimony, page 9 of the said testimony, stated basically that while he was on Okinawa "Maybe I abused it to some extent, because everybody was under the influence. It got to me." This is a far cry from stating that he

abused alcohol and that it got to him. In fact this could easily be interpreted to mean maybe he abused it and maybe he didn't. The quote, "It got to me" refers to the situation on Okinawa and not to the fact that alcohol got to him.

The dissenting opinion also states that the applicant states that he was an "alky" when in effect the applicant, on page 41 of the 1974 testimony, stated that on occasion he would preach "I'm an alky, you know. I have been trough it and it ain't no good." This statement by the applicant refers to his counseling and preaching many years after his separation from the military. It would seem that he would use such a statement in order to establish a rapport with those people who had come to him with alcohol related problems. It should in no way be misinterpreted to give the appearance that the applicant admitted to being an "alky" while in the service.

Dissenters in paragraph C state that the applicant's abuse of alcohol was affecting his

performance of duty and tarnishing his image as an officer and Army chaplain. Nothing could be further from the truth as is evidenced by the testimony of all the witnesses at the 1983 hearing.

In rebuttal to the last sentence in paragraph C of the dissent, it would be noted that after departure from Okinawa, a friend told the applicant that somebody told him that he had heard that the applicant had to be removed because he was an "awful drunk." This is the most extreme case of hearsay and should not be used against the applicant and should not go to the truth of the statement that someone may have said that the applicant was an "awful drunk." In addition, this hearsay, third person or 4th person story, only illustrates the damage that was done to the applicant's reputation, in a not so subtle rumor campaign against him.

The dissent paragraph D seems to me to be totally fault in that the applicant never went to

Alcoholics Anonymous in Okinawa and, in fact, went to counseling sessions under duress which are run by a private. It is beyond me how the applicant can be an Alcoholics Anonymous failure when he was not in Alcoholics Anonymous. The dissent further states that the applicant testified, that nobody forced him to drink; that he drank by himself. This is a complete distortion of what the applicant, in fact, testified to at the 1974 hearing. What the applicant stated can be found on page 39 of the 1974 hearing and to quote "nobody, you now, forced me to drink. I drank myself." That has a completely different connotation than the distortion in the dissent that the applicant drank by himself. It is quite obvious that what the applicant meant was that nobody forced him to drink. He did it voluntarily and that is all it means. It should not conjure up an image of the applicant going off to his quarters and drinking by himself in a state of depression.

How the dissenters can come to the conclusion that the applicant received proper medical treatment and psychiatric evaluation while on active duty is contradicted by all the evidence and most particularly by the evidence taken in testimony in 1983 by Doctor Roark.

The dissenters in paragraph F seem to totally disregard the expert testimony of Dr. Roark simply because Dr. Roark as employed by the applicant. The dissent in paragraph G is contradictory to all the evidence submitted to the Board. The dissenters would seem to have the ability to look into the future and predict when would have happened had the applicant not tendered his resignation.

The dissent in paragraph H comments on the fact that the church directed the applicant to either tender his resignation or lose his ecclesiastical endorsement and although on the face of it, this is correct, this action by the church was due entirely to the letter submitted by

General Caraway. However, it should be noted that the letter in question was based on entirely false or mistaken information as seems to be evidence from the testimony of Colonel McCoid, Colonel McMahon, and Rev. Healy.

In all sincerity, I feel that the dissenting opinion is unfair, unreasonable, and unjust, and I fail to see how it could have been written by reasonable men after giving due consideration to all the evidence submitted in the 1974 and 1983 hearings.

s/Robert D. Loring

Attorney at Law

50 Cole Parkway

Scituate, MA 02066

545-1300

District Court Department

South Boston Division

35 E. Broadway, South Boston, Massachusetts 02127

April 22, 1985

Father Edward Cowhig

Greenbush, MA 02040-0154

Re: Analysis of Dissent Opinion of the ABCMR and of the Memo of William D. Clarke to the Executive Secretary, ABCMR

Dissent Opinion

(Para "a"_. There appears to be no basis in the Dissent opinion of conflicts between your testimony before the ABCMR in1974 and that of 1983. The testimony elicited from both hearings appear to be fairly consistent with one another.

For example, in 1974 you testified that you "maybe" abused alcohol to some extent (p. 000124), but that drinking was used as a vehicle to reach others as part of your apostolic calling, so that you could instill faith and confidence of your men

in yourself as a man, as a soldier, and as a priest, and that you "maybe became dependent on it..." (p. 000125).

At the 1983 hearing, you admitted that you abused alcohol and that it has caused trouble (p. 375), and that you have used it as a crutch (p. 376) in an effort to persevere. (p. 380).

The testimony is consistent and is not in conflict with one another. How the Dissent arrived at the conclusion that the testimony is inconsistent is highly questionable.

(Para "b"). There was no testimony in 1974 that you were an alcoholic at the time of your resignation from the Army. There was testimony that you perhaps (emphasis supplied) became dependent on alcohol (p. 000125) and that you "maybe ..." abused it to some extent." (0. 000124). Any reference to being an "alky" was made by you after your discharge from the Army and it appears that it was made in the context of your Sunday sermons to parishioners (p. 000156).

(Para "c"). The Dissent's conclusions in this paragraph appear to have been drawn from the record and exhibits, certainly not from your testimony. Your testimony that you heard from the "grapevine" that you were an "awful drunk" was made without reference to time or place. Therefore, it is not clear whether it referred to your activities in the military or after your discharge.

(Para "d"). The information concerning AA that the Dissent based is conclusions that you were "not a good candidate for treatment and further rehabilitative efforts" appears to have been obtained from your testimony in 1974 (p. 000154) wherein you stated that you had attended AA meetings, had read literature, and had talked to members of AA. This statement was, however, made without reference to time or place. Therefore, it is not clear whether you may have attended meetings before, during, or after the military service. The reference in this paragraph

about your "drinking by yourself" is a misinterpretation of your statement in 1974 that you drank yourself; that is, no one forced you to drink.

The testimony in 1983 is vague as to whether you actually attended any AA meetings while in the military service. Your testimony suggested that you inquired about AA while in Okinawa, but for several reasons you were reluctant to attend (the meetings were conducted by a PFC; they met in an Episcopal church, and they were in the process of moving). However, there is in your testimony reference to having attended group therapy sessions (pp. 328, 329).

(Para "f"). The statement by the Dissent in this paragraph that your 1983 testimony contradicts your 1974 testimony is erroneous. Your testimony in 1974 was, at times, disjointed and unclear. Many statements were made without reference to specific times and places. Unfortunately, the testimony was more in the form

of a narrative to the Board, rather than in the form of direct answers to specific questions. Your testimony in 1983 was much easier to follow as it was, for the most part, given in response to direct questions, with specific references to time and places.

Nevertheless, the 1974 and 1983 testimony do not contradict one another. At both hearings, you admitted that there were occasions when you abused or misused alcohol (pp. 000124, 000153/1974, 355, 375/1983). At the 1983 hearing, there was more evidence as to the underlying reasons why you drank (to calm down and to persevere, pp. 379, 380). On the other hand, the general flavor of the 1974 testimony as to the reasons for drinking was consistent with the 1983 testimony in that your being the only Catholic Chaplain, airborne qualified, in the Pacific at the inception of the country's combat activities in Southeast Asia put tremendous pressures on you (p. 0000162).

In short, the testimony between the 1974 hearing and the 1983 hearing is not inconsistent as the Dissent suggests, but the 1983 testimony helps to explain the 1974 testimony.

Memo of William Clark

The memo prepared by William Clark appears to mirror the opinion of the Dissent, using the same misinterpretations of your testimony as the basis for his conclusions. Therefore, I will not repeat that which I have stated above.

However, Mr. Clark seems to rely heavily on your testimony about being dependent on alcohol while stationed in Okinawa. Your testimony in this regard is, at most, ambiguous. It is unclear to me whether you had difficulty sleeping because of alcohol intake, or that you used alcohol as an aid to sleep. This one statement, qualified by the word "maybe" and given by you as a non-expert in the field of medicine or psychiatry seems to have been relied on much more than it should have been.

Sincerely,

s/JOHN P. ROACHE, Esq.

Assistant Clerk/Magistrate

10 July 1985

STATEMENT

I, Chester B. McCoid, 566-54-2624, Colonel (Retired), U.S. Army, submit the following observations. These concern the 29 March 1984 memorandum of the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs) (PDASA). The document addresses the appeal of Father Edward D. Cowhig, 016-14-7297, to the Army Board for the Correction of Military Records (ABCMR). The hearings bearing on the matter were held at the Pentagon Building on 21 and 26 September 1983.

The thrust of the PDASA's memorandum is a denial of the Cowhig appeal, based on an embracing of the ABCMR Minority Opinion. At the risk of appearing cavalier, and of being too emotionally involved in the matter, I must respectfully disagree with the PDASA's action.

Attention is again invited to the fact that the damning Efficiency Report, prepared by me on

such short notice on the occasion of Chaplain Cowhig's evacuation of Okinawa, was inaccurate. This basic document, which was used to justify much of the action taken against Cowhig at the time, still impacts on the case. I feel that it should be stricken from the official record.

In my oral testimony on 21 September 1983, I failed to stress how fully the Chaplain participated in operational planning and how comprehensive was his knowledge of impending classified operations in Southeast Asia. In large measure the hostility of the USARYIS Chaplain to Father Cowhig was a result of the latter being unable to inform the former as to exactly why USARYIS-assigned duties could not be undertaken. USARYIS was an administrative headquarters at the time, and Chaplain Emmet Walsh had no "Need to Know." Clearly Cowhig could not keep the Assistant USARYIS Chaplain brief on the 503d's activities, in light of existing security restrictions, and this Walsh could not and would

not accept. Indeed, he suggested that Cowhig was uncooperative and avoiding tasks properly assigned. In any case, this was a key element in the USARYIS view of the Cowhig matter.

Now to the Minority Findings, ABCMR. Although honestly drawn, there are three points contained in the report which do not square with the situation existing on Okinawa in 1961. These are:

1. At no time was our Catholic Chaplain absent without authority from Headquarters, 2d Airborne Battle Group, 503d Infantry Combat Team. He met every requirement fully, both as to time and place. There were occasions when he could have remained on leave or pass and allowed his functions to have gone undone. Yet, he always managed to see that our troopers were properly cared for, and this at the cost of great personal effort in some instances. To suggest that our chaplain was AWOL for a period of four (4) days simply is not true.

2. Although Cowhig drank, as did we all, he always performed his duties in brilliantly successful fashion. Had the Chaplain been guilty of the acts of omission and dereliction leveled by his accusers, morale in the 503d would have suffered. I assert here, without equivocation of any sort, that the morals and morale of our troops were never higher than when Cowhig was our senior Chaplain. I further state that in my opinion, Cowhig was not an alcoholic. This judgment is buttressed by the fact that I had been instrumental only months before in boarding our S5 (Civil Affairs) for just that failing. Additionally, in nearly thirty-five years of service, I had seen many alcoholics and know that Cowhig, with whom I had almost daily contact, simply did not fit the pattern.

3. Much has been made of the Cowhig failure to attend or to participate fully in Alcoholics Anonymous activity in Okinawa. Here was an alleged requirement of which I was not then aware

-- and one with which I would never have agreed, knowing the man. Even conceding that AA might have been useful, and I make no such concession, this was supremely cruel prescription. The net effect would have been to compromise the position of a marvelously useful moral leader and counselor of men in trouble. One must wonder whether anyone in such a situation, alcoholic or not, could have participated in any such program and still gotten his job done. I suggest that once any Chaplain's AA involvement became widely known -- and this would be a certainty -- use usefulness would be ended. It is easy to dismiss this contention, of course. Yet one must place oneself in Cowhig's position at the time. He would surely know that AA attendance, even if indicated by "qualified medical doctors and psychiatrists," would ruin him as a Chaplain. Now, add his feeling that his problem was associated with overwork and hypertension, and one can see that he was faced with an impossible situation. The question is

meet. Cowhig never was ordered to attend AA and in fact, never did attend these meetings and at that time in no way could be termed an "AA Failure," as the `Minority Asserts.'

Now a final comment. Despite the PDASA's busy schedule, it is disquieting to contemplate a mere 24-hour interval between receipt of the ABCMR report and associated recommendations, adoption of the minority position, and publication of his memorandum to that effect. While the Cowhig appeal may be small potatoes in Washington, the man's damaged reputation and the cause of equity and justice would appear to have deserved a less hurried ending.

s/ Chester B. McCoid

Colonel, U.S. Army (rtd.)

67 Bell Street

Middletown, Conn. 06457

September 10, 1985

Rev. Edward D. Cowhig

245 C.J. Cushing Highway

Greenbush, Massachusetts 02040

Dear Father:

Pursuant to your request, I have read and studied the record of proceedings. Attached herewith is my analysis of the final decision reached in your case. You will note that my analysis is addressed to the "Principal Deputy Assistant Secretary," William D. Clark. The analysis should be forwarded to the Honorable Mr. Clark via the appropriate chain of command.

The total lack of Due Process accorded to you at the time you submitted your "alleged" resignation (January 1962) is an issue that needs to be addressed.

I am pleased to have been of service to you.

Sincerely,

s/ Anthony J. DeVico, Esq.

Counselor at Law

TO: William D. Clark

Principal Deputy Assistant Secretary

(Manpower and Reserve Affairs)

FROM: Anthony J. DeVico, Esq.

Counselor at Law

SUBJECT: Cowhig, Edward D., 016-14-7279

Date of Proceedings: 21 and 26 September 1983

Docket Number: AC77-01666G

Index Number: 111.01, 134.01

REFERENCES: Memorandum for the Adjutant General, dated 29 March 1984, signed by William D. Clark

The decision of the Board in subject case has been analyzed by me and I am perplexed at the resolution of the case by acceptance of the Minority report, i.e., the Dissent. The acceptance of the Minority decision as final resolution despite the contrary findings, opinions and recommendations of the Board's majority is, in my view, at variance with generally accepted evidentiary norms. It is my opinion, that

acceptance of the Minority's dissent in lieu of the Majority's findings and recommendations is an arbitrary decision. The decision, in my view, is more concerned with bringing this long standing issue to close than it is with arriving at a just and equitable conclusion.

It is significant that the Board unanimously recommended, inter alia, that the Department of the Army records of Rev. Edward D. Cowhig be corrected to show that "his resignation from the service or effect." While the Minority dissented "***from so much of the foregoing (Majority's) conclusions and recommendations, as pertains to the applicant's promotion***," they were silent as to the recommendation that the resignation and honorable discharge on 23 January 1962 are void and of no force or effect. It is reasonable to assume that if the Minority did not consider the resignation and discharge to be void, dissenting language would so have stated.

The significance of the Board's unanimity in finding that Rev. Cowhig's resignation and honorable discharge from the service on 23 January 1962 were void and of no force or effect show be readily apparent. It is a fundamental legal maxim that a finding of "void" means there is no legal or binding force in existence. In the instant situation it is as though there never was a resignation and honorable discharge on 23 January 1962. There never was a legal resignation and discharge because both the resignation and discharge were found by a unanimous Board to be void and of no force or effect.

Therefore, since both the resignation and discharge were found to be void and of no force or effect, reason dictates that Rev. Cowhig's status as a Chaplain should revert to the position he held immediately, prior to the void resignation and void discharge. Rev. Cowhig's legal standing is that of a person who never had submitted a

resignation and never had received an honorable discharge.

The Board's finding and recommendation of "void and of no force or effect" amply supported by the evidence in the record of the circumstances surrounding the "resignation and discharge." The evidence clearly discloses that there was a complete lack of Due Process accorded Rev. Cowhig when he was requested-directed would be more appropriate to submit his resignation. Not only was Rev. Cowhig without the assistance of legal counsel, but he never was advised even of his right to consult with legal counsel <u>prior</u> to submitting the resignation, which as disclosed by the evidence, was <u>reluctantly</u> submitted. Can any doubt exist that legal counsel would have advised Rev. Cowhig to request a Board Hearing at the time? It is not at all surprising therefore, that a unanimous Board in the instant proceedings found the resignation and discharge void and of no force or effect. It follows, that once the discharge

and resignation were deemed void and of no force and effect, any subsequent proceedings related thereto, were and are irrelevant and of no legal force or effect. Once an instrument is found to be Void it is as though there never was such an instrument in existence.

On this one issue alone, therefore, namely, that Rev. Cowhig's "resignation and honorable discharge were void and of no force or effect," Rev. Cowhig should be restored to his position and status at the time he submitted the void resignation.

Although I am convinced that you should reconsider your decision and accept the conclusions of the Majority solely on the legal basis of Rev. Cowhig's deprivation of Due Process in January 1962 and the Board's unanimity regarding the voidness and lack of force or effect of the resignation and honorable discharge, I cannot refrain from offering some additional comments.

The Minority concluded in the dissent that numerous conflicts existed between Rev. Cowhig's present testimony and the testimony he previously offered. This conclusion is, of course, solely an expression of opinion because they chose to accept certain testimony as being credible while they rejected all other testimony favorable to Rev. Cowhig as being not credible. Thus, the alleged "conflict" came into being.

If these proceedings had been a criminal trial in a civilian court, the result -- assuming the dissenters maintained their position -- would have been a "hung jury." If Rev. Cowhig had been tried by Court-Martial pursuant to the Uniform Code of Military Justice, he would have been acquitted since two-thirds of the members failed to vote of conviction. (The term "conviction" is here employed solely in a generic manner as an analogy) Amazingly, however, in this Administrative proceeding where informal rules of evidence apply and where the outcome of the

proceedings is favorable to Rev. Cowhig, the final outcome is resolved against Rev. Cowhig because of the conclusions of the Minority. It is not stretching reasonableness to conclude that there must have been some reasonable doubt for a three to two decision. That this doubt should be resolved against Rev. Cowhig is a serious reflection on fairness and justice in the Military.

One final observation. I am perplexed, even appalled by the language appearing in paragraph "g" of the Dissent. I quote: "that they (dissenters) firmly believe that had the applicant not tendered his resignation, he would have been involuntarily separated from the service in a very short period of time due to alcoholism, that this was based on the fact that the applicant would not have sought psychiatric help, that he would have continued to abuse alcohol as evidenced by his numerous episodes of drinking after discharge, civilian hospitalization, and the loss of a church

parish due to his abuse of alcohol."

Not only is the foregoing language highly presumptuous, but it is also quite gratuitous and irrelevant. Bear in mind that the resignation and discharge were found to be void and of no force and effect by all members of the Board. For the dissenters to opine what an Administrative Proceeding back in 1962 would have concluded is most inappropriate, especially since Rev. Cowhig, because of his being deprived of Due Process, had no opportunity to request such a proceeding. What Rev. Cowhig did or did not do subsequent to the "VOID" resignation and discharge is totally irrelevant and smacks of a degree of bias.

In conclusion, the Dissenting opinion completely disregards the real issue involved in these proceedings, namely, the void resignation and discharge.

Simple fairness, legal justice and equity require that you reconsider your action and that you adopt and approve the conclusions of the

Board's majority.

Respectfully submitted,

s/ Anthony J. DeVico, Esq.

Counselor at Law

Associate Professor

Graduate School of Arts and Sciences

Division of Counseling Psychology

Boston College

Chestnut Hill, Massachusetts

My name is Irving Hurwitz. I reside at 9 Browning Road, Newton Centre, Massachusetts 02159. I am employed as an Associate Professor in the Graduate School of Arts and Sciences at Boston College, in the Division of Counseling Psychology, which is part of the Department of Education. I have held this academic position since August, 1976. In addition, I am a consultant to the Division of Child Psychiatry at New England Medical Center, Boston, MA where I also have an appointment as visiting lecturer at Tufts University School of Medicine, Department of Psychiatry.

I received my Ph.D. in psychology at Clark University in Worcester, Massachusetts in 1965 and was employed at the Judge Baker Guidance Center

and Children's Hospital Medical Center in Boston from 1957 to 1976, prior to my coming to Boston College. During World War II, I served briefly in the Navy, and from 1954 to 1957, I served in the U.S. Army Medical Service Camps, stationed at Walter Reed Army Hospital, Washington, D.C., and later as chief psychologist at the U.S. Army, Branch Disciplinary Barracks, Fort Crowded, Missouri. I was discharged with the rank of 1st Lieutenant in April, 1957.

I have been asked by Rev. Edward Cowhig to review the documents surrounding his discharge from activity duty in January, 1962, and his subsequent attempts to have his records corrected and his opportunity to resume his military career restored to him. I would like to comment on a number of points which seem to me most significant in the chain of events which led to what seems to me one of the most flagrant abuses of military and judicial power I have seen. These experiences are worse than any number of glaring miscarriages

which I observed during my own active service period in an Army prison.

The first reference to any hint of misconduct on Rev. Cowhig's part appears to surface around an episode occurring during his service in Germany in January of 1956 when it is alleged that he failed to appear to minister to the spiritual needs of a woman whose baby had died at birth. The implied explanation of this event was based on alleged abuse of alcohol which supposedly prevent Rev. Cowhig from appearing at this woman's request. However, subsequent written material supplied by a fellow officer and priest, Rev. Cronin, clearly exonerated Rev. Cowhig from any behavior whatsoever that would have remotely been construed as alcohol related, or any "dereliction of duty", thus rendering any use of this prior reported material as null and void in any effort to discredit his service.

No subsequent references to alleged intemperate use of alcohol or any other concerns

over the quality of his performance appear until the summer of 1960, on July 19, 1960, when a brief hospitalization was carried out in Okinawa where Rev. Cowhig was then assigned as chaplain to the 503rd A.B.G. All reports indicate that Rev. Cowhig behaved appropriately while in the hospital and showed no evidence of alcohol or narcotics use, and was discharged only with a somewhat equivocal diagnosis based on the result of liver function tests, but with no cause specified for the suspected liver condition. (See letter from William A. Rohde, M.D., dated May 28, 1985, par. 1.)

All indications, from reports and efficiency ratings, regarding the quality of Rev. Cowhig's service indicated that he was an exemplary chaplain and officer. He devoted himself unstintingly to the needs of the troopers in his unit and other organizations, and instilled a sense of admiration and high morale through his willingness to share literally all of their

military activities and responsibilities. He was in every sense, a chaplain of airborne soldiers, "a jumping padre". The record shows that he demonstrated enormous initiative and energy in his work, and he evidence the most profound dedication and devotion to the spiritual needs of the soldiers he served, as well as servicemen in other units, civilians, government officials, etc. With only one exception, his officer efficiency ratings reflect the high quality of his performance, and the list of his innovations and contributions to the unit and the surrounding community have already been cataloged and described on numerous occasions. However, the animosity directed toward him, as noted by observers on the scene, by another chaplain in Okinawa, set in motion a chain of events which culminated in his evacuation to Walter Reed Army Hospital in October 1961, and which led to his eventual release under threat of withdrawal of his ecclesiastical endorsement. A review of these events identifies three major

elements which represent the most influential forces leading to this unjust separation.

The first of these was his alleged neglect to follow through on a St. Michael's Day jump, a voluntary activity for Catholic paratroopers in his unit, which Rev. Cowhig had initiated, and which involved coordinating approximately 500 men, a number of aircraft, arranging a drop zone, and a mass to be said after the drop. The cancellation of this event was alleged to have been the result of Rev. Cowhig's overindulgence in alcohol, and his subsequent neglect of his related responsibilities. In fact, however, it has been repeatedly documented by air force and army sources that a typhoon threatening the island had prevented any aircraft from flying, obviously including those scheduled for the jump which was naturally called off by Rev. Cowhig himself two days prior to its schedule. There is no evidence that Rev. Cowhig, drunk or sober, had any derogatory influence whatsoever on the outcome of

that planned jump in September of 1961. It was purely and simply a meteorological issue, and in no way a personal failure on Rev. Cowhig's part.

There had been prior to the St. Michael's Day jump a hospitalization again in February, 1961, where reference is made to an observation that Rev. Cowhig had "apparently not reported to work for 4 days", this signed by a medical officer (Majory Howard). This comment is clearly an allegation by hearsay, not a medical or psychological finding based on any reliable clinical evidence, and at best is a peculiar "second hand" comment used to validate an impression of mild intoxication as indicated by the comment per Capt. Turner suggesting that it was not even based on any first hand knowledge which captain Turner might possess. At the time of the February, 1961, hospitalization, a psychiatric consultation was requested, and it is noted that a brief contact was made by a Colonel Hannum with Rev. Cowhig, consisting of a 15-minute

conversation, and an interaction between Colonel Hannum and the attending physician. No psychiatric report is found in the record of this 8-day hospitalization. Rev. Cowhig was given various sedatives (see Dr. Rohde's report of 5/28/85) and returned to duty status.

With the exception of a liver enlargement and a tendency to overweight, the major significant features reported about Reverend Cowhig emphasize his anxiety and vulnerability to depression and stress. It is not until September, 1961, that reference is made to alcoholism at the time of an additional hospitalization. No objective evidence, however, is provided to substantiate this diagnosis, whether it be physical manifestations of gait, mood, speech, etc., or any laboratory finding of blood-alcohol levels, etc.

From that point, events move toward Rev. Cowhig's evacuation from Okinawa to Walter Reed Army Hospital in Washington, D.C. Here, the most telling issue is a letter, allegedly sent from Lt.

General Caraway to the Chief of Chaplains, concluding, on the basis of information supplied to General Caraway, by others, that he was not performing his duties in a manner commensurate with what was expected of a chaplain and an officer, and that his activities had a seriously adverse effect upon the morale of the men in his unit, that they were "disillusioned", that they had been stranded on the St. Michael's Day jump, and that all of these behaviors were a result of rev. Cowhig's "alcoholism" and that he was therefore no longer of value to the military. A copy of this letter was sent to the Military Ordinariate. The credibility of a "Three Star Letter" obviously prompted that church organization to demand his resignation. Unable to disclose even to his religious superiors the nature of the volatile situation in Southeast Asia at that time, he unwillingly, under duress, reluctantly offered his resignation. This letter, written at a time when the unit was in critical

need of a Catholic chaplain cleared for top secret information, had apparently played a vital role in the eventual separation of Rev. Cowhig from the service. However, on a number of occasions, General Caraway has since disavowed any knowledge of this letter, has denied writing it, has dissociated himself from its contents, etc. The origin, transmission, and even location of this letter remained shrouded in mystery for many years, yet it continued to impose its corrosive and destructive influence on all efforts by Rev. Cowhig to seek reinstatement. This letter seemed to be the capstone of a whole network of invidious communications about Rev. Cowhig which led to a disastrous change in his efficiency reports by two officers, Colonel McCoid and Colonel McMahon, both of whom have repeatedly testified, since that time, that these OER's represented a perversion of the truth. The awesome guilt which has plagued Colonel McMahon for almost a quarter of a century is vivid in his own testimony. On all sides there

is powerful evidence that Rev. Cowhig was a superior chaplain and officer, that he was dedicated to his mission, and that his only flaw was his avid commitment to the welfare of men whom he knew were facing the imminent possibility of combat and death.

However, despite the truth, Rev. Cowhig was transferred to Walter Reed. He had, in Okinawa, been perfunctorily recommended, and, inappropriately so, for AA and group therapy. I say inappropriately because AA, as has been well documented, is effective as a voluntary program based on the initial and fundamental need for the participant to acknowledge that he/she is an alcoholic. Inasmuch as there was no evidence on either side, that is, in the real world of performance, and in Rev. Cowhig's own self appraisal, of alcoholism, then AA was clearly unwarranted. As to the group therapy, there is evidence that the program seemed haphazardly implemented and casually recommended, without

appropriate preliminary diagnosis and treatment planning. Group therapy is not a watered down version of any form of psychotherapy. It is a demanding, difficult, complex, and potentially disruptive process and as such should be recommended and provided only after careful and thoughtful review of all factors in a case. Since it is not manifestly clear that this was done in Rev. Cowhig's case, the lack of success in the referral is not surprising. What is clear, however, is that Rev. Cowhig would have been an appropriate candidate for treatment of his anxiety, tension, and stress, had a more reasonable and meaningful evaluation of his situation been carried out in Okinawa, rather than the knee-jerk reaction to a preconceived notion of alcoholism, leading to a self-fulfilling prophecy, leading to his eventual discharge. That the terms "preconceived" and self-fulfilling do indeed apply is seen in the working of the report of Dr. Franklin, the medical officer in charge of Rev.

Cowhig's case at Walter Reed Army Hospital. Dr. Franklin, at the time of his contact with Rev. Cowhig, was two months into his psychiatry residency, a program which normally encompasses 36 months, so he had scarcely completed 5 percent of his training with 95 percent still unfinished. he writes that the chief complaint was, "I realize this thing has become a problem." What the pronoun "this" or the noun "thing" refers to is totally unspecified. Is it hospitalization? Is it being in a psychiatric ward? Is it the threat of loss of status? It simply is not clear. Manuals of psychiatric examination do not specify the importance of identifying the chief complaint, but in such terms that the nature of the problem is clear, e.g., "I cannot sleep," "I am sad all the time," "I am not able to function sexually (vocationally, recreationally, etc.)".

To say "This thing has become a problem" as the chief complaint borders on the absurd. Contained in Captain Franklin's report is an

account of an episode which reportedly took place in late October, 1961, at the Knights of Columbus Hall in Washington, D.C. Captain Franklin, in reviewing this event, states that "Chaplain Cowhig characteristically denied any active role in this misfortune... "The use of the term "characteristically" clearly implies that Captain Franklin was in possession of information that defined ongoing long-term, consistent traits in Reverend Cowhig's personality -- specifically that he would refuse to shoulder blame for his behavior. There is no evidence that Captain Franklin had information at his disposal which would justify his so classifying Reverend Cowhig. Furthermore, as documented evidence irrefutably established, Reverend Cowhig did not have any active role in this misfortune. In fact, he acted heroically at his own peril to alleviate a very dangerous situation. Here again, distorted reports, false observations, and misguided impressions are used as a major basis upon which

to conclude that he cannot control his use of alcohol, that it leads him into severe misbehavior, and therefore, he is unsuitable for military service as a chaplain. The observation made by Captain Franklin that Reverend Cowhig showed "evasiveness and distrust of the interview and its implications in terms of his future" is, to say the least, not difficult to understand considering the fact that the whole fabric of reports, innuendos, hearsay, and unsubstantiated rumor (along with top secret information on a "need-to-know basis", still classified as of 7AUG1984, DAMI letter) threatened to deprive him of the two things that meant most to him in his life -- to be a chaplain and to serve with the airborne troopers he loved.

As Dr. Rohde points out in his review of the medical findings, dated 5/28/85, it is surprising that grave and far reaching conclusions were drawn by Captain Franklin without benefit of psychological testing,and without reasonable

exploration of the psychological and psychiatric reasons for Reverend Cowhig's admittedly sporadic overindulgence in alcohol far short of the kind of addictive involvement that warrants the diagnosis of alcoholism. Certainly, anxiety and depression far outweigh in their manifestations in the clinical picture, any convincing basis upon which to conclude that alcoholism is the sole, singular, and major determinant of any diagnosis to be made. It is as Dr. Rohde suggests "a conspiracy of mind had begun to take place in labeling (Reverend Cowhig) conveniently as an alcoholic and refusing to consider any other differential for the anxiety condition which he presented ...

"Further," he states, "I would think that if his commanding officers and those around him had been more supportive of his personal situation they would not have been fixated on whatever alcohol intake he may or may not have consumed, and that a shabby outcome such as this would have indeed been prevented."

With respect to the exploration and definition of what Dr. Rohde refers to as "other differentials for the anxiety problem", psychological testing was carried out by Wolfgang W. Riedel, Ph.D., of 4400 East West Highway, Bethesda, Maryland, at the request of George Roark, M.D. Dr. Reidel, on the basis of administering five psychological tests, three of which are well-recognized personality or "projective" tests, concludes "his (Reverend Cowhig's) past history of drinking was largely medicinal" -- his way of combating loneliness and anxiety, in what in his circles was an `acceptable' way of acting out." As for a diagnosis, Dr. Riedel states, "I tend towards Borderline Personality ... his elevated scores on the MA scale of the Minnesota Multiphasic Personality Inventory ... point toward the possibility of a bipolar depression, especially in view of his strong fear of depressive stimuli."

At no point in his detailed analysis of psychological test material does Dr. Riedel indicate the presence of a diagnosis which in the context of criteria stated in the Diagnostic and Statistical Manual III, would qualify as Alcohol Abuse, and which has as its essence, impairment in social or occupational functioning. There are in DSM III eleven alcohol related diagnoses with specific criteria spelled out in each case. In no instance does the record of Reverend Cowhig's performance as a priest, a chaplain, a soldier or a man, meet the criteria for any of these diagnoses related to problems with alcohol. Indeed, the one differential diagnosis which excludes "alcoholism" in DMS III, would be "episodes of intoxication without a pattern of pathological use." It is this, more clearly than anything else, which characterizes Reverend Cowhig's involvement with alcohol, a picture not unlike the situation which prevails for many of us.

When all is reviewed, analyzed, digested, interpreted and summarized, what we are left with is the picture of a man dedicated to his career as a priest/soldier, zealous in the pursuit of his work to the point of self-sacrifice, whose enthusiasm for his dual vocations led him to initiate activities and programs which disturbed the complacency of a minor superior, and which led to the gross distortions and manipulations of relatively innocuous and commonplace experiences into the grim spectre of ominous personal deficiencies and pathological twists in his personality and behavior. A chain of events was set in motion that perverted the actions of good and honest men, and exploited the naivete and gullibility of the inexperienced and unreflectively well meaning. The net result was the destruction of a man's career, self-respect and commitment. Only Reverend Cowhig's indomitable faith has led him to survive these massive blows to his life's ambitions and goals.

Even if one accepts the premise, false as it is in its very core, that he had a "problem with alcohol", then the injustice visited upon Reverend Cowhig becomes even more pronounced when one sees the total lack of any concerted or systematic effort to provide him with any meaningful and potentially effective help. In 1961, the state of the art in the treatment of alcohol abuse was not that primitive that some form of rehabilitation effort could not have been initiated to provide the appropriate care for an officer with 10 years of superior service on hazardous duty, recommended for promotion, given the highest security clearance, and possessing the admiration and respect of his fellow officers and the men that he served. It is difficult to comprehend that in the short space of approximately six or seven months, from February to September of 1961, his exemplary record would have been as egregiously reversed, culminating in what amounts to a forced resignation in an atmosphere of near disgrace.

The only reasonable conclusion that one can draw from this is that forces were at work other than those which can be defined as medical or psychological in nature, in determining the decisions that were made in Reverend Cowhig's case. He was and is, simply stated, a victim of a pernicious combination of chance, being in the wrong place at the wrong time, and intent, namely, the desire of an offended superior to have him removed from a situation where his presence threatened the secure position of is colleague. After almost a quarter of a century of seeking justice, it is really time to "set the record straight" and restore to Reverend Cowhig his good name and honorable status. He is not merely seeking money, nor does he ask for anything that suggests punitive retribution, only the right to have his excellent service to his country and his God recognized as unblemished and unmarked by anything other than its true character of superiority and honor. It is a debt to him, the

payment of which is long, long overdue.

Signed: Irving Hurwitz, Ph.D.

Laurence J. Clark, M.D.
Internal Medicine
1451 Belle Haven Road
Suite 320
Alexandria, VA 22307

Diplomate, American Board
of Internal Medicine

October 24, 1985

Army Board for Correction of Military Records:

Re: Edward D.Cowhig
Greenbush, MA 02040-0154
R.A. 075056
S.S. 016-14-7279
Docket No. AC77-01666G
Index No. 111-01-134.01

Gentlemen:

I have read and reviewed with interest both the Army medical records for the periods 1960 and 1951 regarding Father Cowhig and the conclusions drawn from them by Dr. William A. Rohde. Dr. Rohde deduces that Father Cowhig was primarily

suffering from an anxiety disorder and/or concurrent depression during that period. Dr. Rohde is most convincing when he suggests that excessive fixation on the issue of alcohol consumption by Father Cowhig's colleagues helped to prevent recognition of the true nature of the problem and that he was never afforded appropriate medical or psychiatric treatment.

My most regrettable observation is that the records are remarkable for their lack of completeness. It is difficult to determine from them the true facts and spirits of the events. Attempting to speak as an unbiased medical reviewer, I would dispute Dr. Rohde's specific interpretation of the liver functions and implications that an acute bout of shigellosis was responsible for the abnormalities. However, I do not believe that the real issue is the existence of a problem of alcohol use but whether or not anxiety and depression were contributory to its use; particularly in light of the professional

demands and pressures on Father Cowhig during that period.

The difficulty of interpreting the records is compounded by the number of facilities, institutions and physicians involved in his care. What is apparent is an unfortunate lack of a continuum of progress, impressions, evaluations, diagnoses and treatment plans which would have assisted the various attending physicians and possibly led to a very difficult outcome. There is simply no evidence in the medical records that the problems of anxiety or depression were clearly substantiated and treated, nor is there substantial evidence to support a diagnosis of chronic alcoholism.

Respectfully yours,

Laurence J. Clark, M.D.

LJC/sb

Staff Psychiatrist

Veterans Administration

Boston, Massachusetts

6 November, 1985

Cowhig, Reverend Edward D. SS 016 14 7279 11/06/85

Psychiatry Examination:

Reverend Cowhig, 66 years of age, served as a chaplain in the Army from 02/51 to 01/62.

He was on chaplain duty in 1961 in Okinawa with a group of airborne troops with whom he had taken many practice jumps, for whom he was a confessor and pastor, and apparently with whom he was getting along very well except that he was at the time having a great deal of pressure by himself on himself in regards to what was going to be happening to these troops. They were apparently going to be sent on a special mission into one of the Southern Asiatic countries in order to protect an airport with the possibility of many casualties in that flight. he remembers, at the time, that he was very anxious, felt very

sad and depressed about the men. He had never been a teetotaler at the time and apparently had done, according to him, a certain amount of drinking to calm himself and his feelings about the men. He feels at that time that he was relieved from his chaplain's duty unreasonably and sent back to the States to Walter Reed Hospital. There are references without much psychiatric backup or objective evidence to the diagnosis of acute and chronic alcoholism. However, no mention of the fact in retrospect seems to have been the case. According to him, he was removed from his chaplain's position administratively and he felt that his career, both as a priest and as an Army chaplain, were in a shambles. He has accepted this, as a minister of God he says. Meanwhile, he has taken certain steps to clear his name.

He apparently had a hearing before the Army Board for correction of military records in September of 1983, a Board which seemed to rule the majority on his behalf in an attempt to

eliminate from his records the diagnosis of alcoholism and the administration separation. Majority apparently felt that he was indeed sick with a mixed neurosis, probably anxiety and depression. The dissenting minority report took exception to this. Apparently the officer in charge of the investigation backed the dissenting minority and overruled the majority position.

This examiner has, in particular, reviewed letters in the administrative folder, one of William A. Rohde, M.D., dated May 25, 1985, in which Dr. Rohde reviews the Army medical records of Chaplain Cowhig; the letter of March 4, 1985, of George W. Roark, M.D., of Bethesda, Maryland, referring to Dr. Roark's testifying before the Army Board of correction of military records; and the letter of Laurence J. Clark, M.D., Alexandria, Virginia, dated September 1, 1985. The letters of Dr. Clark and Dr. Rohde deplore the incompleteness of the evidence for a diagnosis of acute alcoholism. Both doctors feel that it was almost

impossible to make that diagnosis on the basis of objective evidence and the records as they stand. Dr. Rohde further feels, in his letter, that Reverend Cowhig's diagnosis was indeed mixed neurosis, anxiety and depression. A review of Dr. Roark's letter strongly concludes this opinion. Dr. Roark felt that Reverend Cowhig's abuse of alcohol was secondary to a neurotic disorder characterized by mixed depression and anxiety symptoms, and that further if he had been given adequate treatment for an underlying psychoneurotic disorder, it was reasonable to expect that the alcoholism would have subsided. Perusal of the administrative records, the three letters above referred to and interview today with Reverend Cowhig makes one definitely feel that Reverend Cowhig was using alcohol as a tranquilizer to help his symptoms of anxiety and depression.

The reading of the record by this examiner leaves him with a sense of disquiet and uneasiness

and a sense that something is missing and confused about this story. To wit there seems to have been little reference to the evaluation of anxiety and depression, no attempt to treat, no attempt even to evaluate as a matter of record the alcoholism, no attempt to handle the problem as a medical one. The examiner can come to no conclusion at this point, except to deplore the fact that a more effective investigation was not made, whenever an administrative solution is sought to a medical problem it has an unsatisfactory ending similar to this.

On talking further with Reverend Cowhig, it is discovered that he is a passionate man, he is quite expressive and quite opinionated, and the examiner wonders whether or not he may not have stepped on someone's toes in the process of his outspokenness.

There is another very peculiar revelation in the records brought to the attention of this examiner by Reverend Cowhig; namely, that a letter

written under the name and signature off the commanding general of the division for which Reverend Cowhig served as chaplain criticized Reverend Cowhig for being an alcoholic. When the chaplain, himself, asked the general about this letter, the general heatedly denied it, denied his signature, although he thinks it was not a forgery, and feels that he signed something without ever having looked at the material, something which apparently was presented for him by his adjutant. Again, this leaves one with a very peculiar feeling.

Whatever alcohol problem Reverend Cowhig may have had, he apparently has been a nondrinker and totally sober for the last 11 years. He seems to have been exemplary in his work. It seems very peculiar to this examiner that under such pressures and after having been accused in such an unredeeming way of being an alcoholic that he should have been able to put his act together sufficiently to function in a pastoral way is

quite striking. He seems to have had the support of his Bishops, Cardinal Cushing, Cardinal Medeiras and Cardinal Spellman.

Mental status: Reverend Cowhig is a blithe, hail-fellow-well-met person who talks loudly, brusquely, spontaneously, yet who shows certain signs of irritability, tenseness and depression. There are no psychotic determinants. There are no signs of alcoholism. His sensorium is intact. There is no thought disturbance. He is a very involved human being. His judgment is good, though somewhat impulsive, and very human.

Diagnosis: (1) Generalized anxiety disorder, with depressive features, chronic, moderately severe. (2) Alcoholic abuse, by past history, in total remission for 11 years and secondary to diagnosis (1).

Discussion: It is not possible for this examiner, on the basis of what he has gleaned from the veteran's records, the 1985 letters of the three doctors mentioned and this examiner's

personal examination of Reverend Cowhig as well as reverend Cowhig's remarks to conclude that there is much evidence for anything conclusive except the use of alcohol secondarily to control symptoms of anxiety and depression.

Edmund N. Kudarauskas, M.D. ENK:psi/am

Psychiatrist 11/07/85

MEDICAL ASSOCIATES OF

ST. ELIZABETH'S HOSPITAL

120 Cambridge Street, Boston, Massachusetts 02135

(617) 682-7000 Ext. 2900

July 28, 1986

Father Edward Cowhig

245 Chief Justice Highway

Greenbush, MA 02040

Dear Father Cowhig,

I have extensively reviewed your available records. The hospitalization from July 8 to July 19, 1960, with a diagnosis of probable fatty liver degeneration is without substantiation. There was no biopsy performed and this diagnosis can only be assumed. The primary reason for admission was that of diarrhea and tenesmus. Although a culture was negative, one culture does not eliminate infectious etiologies for the symptoms of probably gastroenteritis. It certainly does not exclude that of a viral gastroenteritis. This too would have improved with appropriate diet and rest.

The hospitalization in February of 1961 suggests that there was history of recent increased alcohol intake. There was again only a finding of a palpable liver below the right costal margin but not that of the total span of the liver. There were no liver function abnormalities, nor was a biopsy done. Father Cowhig did not have delirium tremors. He was released without further treatment despite being felt to be under increased stress. Fatty infiltration of the liver could not be a cause of his symptoms. This process occurs only as the result of other diseases.

In March of 1961 a physical examination was done. No comment was made regarding anxiety or stress. There was no stigmata of chronic liver disease. No remark was made of liver size again, just an assumption which appears to be carried over from record to record. There is no recommendation made regarding present or future care.

The hospitalization in October, 1961, at Walter Reed Hospital presents some interesting questions as to what had transpired over the past year. There is no indication from the prior records made available that there was continued medical supportive therapy given to correct problems associated with an increased alcohol intake. His physical exam was again essentially negative save for a probable liver margin. It is at this point that the prognosis for rehabilitation was stated to be guarded. He was, however, returned to duty at this time.

The final physical in December, 1961, does not contain any information regarding physical status or recommendations.

The second part of the folder containing depositions regarding care seems to imply that the diagnosis of fatty degeneration of the liver was not totally accurate. There was certainly a history of increased alcohol intake, but it appears that this was only one factor and that the

other stresses were not identified nor were the appropriately treated. This is the conclusion that I have reached in reviewing these records as an independent party not involved in the care of Father Cowhig at that time.

Sincerely,

Signed: John J. Dowling, M.D.

JD/pjr

Massachusetts Hospital School

3 Randolph Street

Canton, MA 02011

(617) 328-2440/727-9655

John H. Bett

Superintendent

Richard M. Kilfoyle, M.D.

Director of Medical Education

February 6, 1985

Rev. Edward D. Cowhig

245 Chief Justice Cushing Highway

Greenbush, MA 02040

Dear Father Cowhig:

Today I reread all the material which you had previously provided, and I went over the most recent report of Dr. Rohde. The affadavits of Chester B. McCoid, Colonel (Ret.), U.S. Army, as well as that of Colonel Robert E. McMahon, (Ret.) U.S. Army. The statements of Irving Hurwitz, Laurence J. Clark, M.D., and of George W. Roark, M.D., were all reviewed again. these speak

eloquently for themselves, and I could not add or subtract from any of them.

I did concentrate on the medical records, and tried to view them in as impartial light as I could. I tried to put myself in the position of an outsider who would be totally unacquainted with the situation.

Firstly, as an orthopedist, I am not qualified to appraise the various liver function tests, the psychiatric aspects, or the judgments of the Internists who were involved in your case. But a review of the history as given in the admission to the hospital on July 8, 1960, reveals that there was consumption of 3-4 bottles of beer a day, and prior to admission, "considerable amounts of vodka, beer and gin." Paraldehyde was ordered, asked for and taken, as well as a chloral hydrate. The blood pressure went from alarmingly high to normal, and there was evidence of much anxiety, the reasons for which are apparent from the letters which accompanied the medical records,

and which were referred to above. You were the Catholic chaplain in charge of paratroopers who were about to embark on a very hazardous attack far into Indo China, and with a very high probability of heavy casualties. You were one of the few officers who were privy to the nature of the mission, and the destination, and were under severe constraint not to reveal this even under severe provocation.

One of the things which is quite striking is the absence of any findings of a blood alcohol, which must have been within the capabilities of the laboratories at the time and lace. The diagnosis of alcoholism must not have been so obvious that the alcohol level was called for, and it, no doubt, was a clinical impression.

The diagnosis includes mixed neuroses, anxiety and depression, and that being the case, alcohol is a frequent tranquilizer in providing relief from the symptoms of these conditions, and it certainly in wide use for that purpose in the

armed services of all nations, whether at peace or war. You never denied use of alcohol, and my view after reading all the records available is that there might have been an overindulgence because of the many tensions at the time, and that there were other manifestations, in the form of labile hypertension, nervousness, shakiness, and the like, not to speak of the diarrhea which brought you to the hospital in Okinawa in the first place.

Apart from the medical records, and in light of the outstanding reports from your commanding officers, your well-known devotion to the paratroopers, and the ten years which you put in, most of it overseas, loss of a promotion, and a "resignation" from the service seems a grubby reward for a chaplain who put in his time with the troops in the most hazardous branch of the armed forces, instead of an easy chair in some posh area in the world.

I hope this letter is of some help in resolving your continued troubles.

Sincerely,

Signed: Richard M. Kilfoyle, M.D.

NEW RELEVANT EVIDENCE

RECENTLY DISCOVERED (1991)

Recently discovered relevant evidence previously submitted in companion case, Ct. App. 91-2027, in plaintiff's brief and appendix pp. 130-140 and which confirms and corroborates earlier dated evidence of other reputable medical doctors, psychiatrists and psychologists which are in the record below as to misdiagnosis, lack of treatment of reputed medical condition. Note: Dr. George Roark's comment on p. 137, "I don't know whether he thinks of himself as a crusader. I think he may well function in that capacity in terms of how diligent he has been in persevering in bringing this case to the attention of the authorities."

Note: Rule 30(b) "... parties shall have regard for the fact that the entire record is always available to the court for reference and examination ..."

Dr. Roark -- 18 October 1991

Lt. Col. (Ret.) T. Kelly -- 6, 21, 23 August 1991

Dr. J. A. Day -- 31 October 1991

George W. Roark, M.D.

205 Locust Court

Issue, MD 20645

October 18, 1991

Fr. Edward D. Cowhig

St. Alphonsus Rectory

488 Elliott Street

Beverly, MA 01915

Dear Father Cowhig:

At your request I am forwarding my opinions concerning the March 1984 reversal of the Assistant Secretary of the Army of the recommendations of a majority of members (3 to 2) of the Army Board for Correction of Military Records (ABCMR) reached in the Board's September 23-26, 1983 Hearing of your petition. I have based this response on my review of a transcript of my testimony before the Board on September 23, 1983; and on the following letters you provided for my examination including:

(1) From - Laurence J. Clark, M.D. to the ABCMR, dated October 24, 1985;

(2) From - Edmund N. Kudarauskas, M.D. to (address unknown), dated November 22, 1985;

(3) From - William A. Rohde, M.D. to ABCMR, originally dated May, 1985; corrected to January 23, 1986;

(4) From - Richard M. Kilfoyle, M.D. to Fr. Cowhig, dated February 6, 1986; and

(5) From - John J. Dowling, M.D. to Fr. Cowhig, dated July 28,1986.

In addition I re-reviewed my file on you which I had earlier reviewed without the benefit of a transcript of my testimony before the ABCMR, as reflected in my letter to you of March 4, 1985.

As you will recall in my testimony before the ABCMR I drew upon my 5-hour psychiatric examination of you on September 7, 8 and 23, 1983, plus the report from Wolfgang Riedel, Ph.D., of his 3 hours of psychological testing on September 9, 1983. The opinion expressed in the Dissent

that my examination was invalidated by the twenty plus years that had passed since your illness on Okinawa (1961-62) does not take into account the intensity, thoroughness and sophistication of your 8 hour examination by Dr. Riedel and myself. The Dissent also shows naivete in assuming that the "facts" I adduced from my examination were based solely on your verbalized memory of events in your life twenty years earlier. Another implication in the Dissent was that my clinical judgment was impaired or unprofessionally influenced by my retention by your attorney for the sole purpose of facilitating his presentation of your case. In interpret this implication as suggesting that my conclusions were less than objective, if not myopic in effect; and that my motive in accepting your case was less than professional, both of which implications I reject outright. The opinion of the Board (which consisted entirely of non-medical members) should have been reached on the basis of weighing all the facts, as presented,

not (as in the Dissent) evaluating the conclusions of the examining psychiatrist and psychologist.

In reviewing the transcript of my testimony, I attempted to respond to questions you asked me to address in paragraphs 1, 2 and 3 of your letter to me dated May 16, 1985. (Please accept my apology for my long delay in responding. I misplaced the first copy of the transcript you had mailed to me in March 1985.)

(1) Para. 1 (of yours of May 16, 1985): The essence or central point of my examination findings and conclusion was that your illness on Okinawa in 1961 was due to a psychoneurosis, (generalized anxiety disorder) which you were attempting to self-treat through increasing your use of alcohol for its tension-reducing and sedative effects. I believe that had your condition been accurately diagnosed, and had appropriate treatment been provided by competent military medical personnel in 1961 or 1962, that

your symptoms could have been mitigated or resolved and you then could have returned to duty.

(2) Para 2: I could find no reference on p. 160ff. in the transcript of the question of the diagnosis of your condition. However, on pp. 175, 188-190 I did draw a clear distinction (based on the current nomenclature of mental disorders of the American Psychiatric Association, D.S.M.-III-R) between alcohol dependence (or addition) and episodic alcohol abuse/misuse secondary to stress or underlying illness. In my opinion you suffered from alcohol abuse in 1961-62, not dependence. (Regretfully, in 1961-62 the nomenclature did not make this distinction clear and the diagnosis of chronic alcoholism was applied both to conditions of alcohol dependence and to various types of alcohol abuse, overuse or misuse.) I testified that in my opinion your abuse of alcohol was a form of self-medication secondary to the stress of your duties and to the

recurrent acute feelings of anxiety about the prospect of failure in your assignment.

(3) Para 3: (You have asked me to address a number of issues in this paragraph, some of which I believe I covered in the foregoing.) As to Dr. Franklin's inexperience and questionable competence, the absence in the narrative summary of your Walter Reed General Hospital (WRGH) hospitalization of any reference to the psychologically traumatic loss of your mother, or to the childhood experiences sensitizing you to the possibilities of mutilating injury or death would suggest the same. Presumably, he was supervised in his work so that the failure to secure senior psychiatric consultation and psychological testing may not be laid entirely on him.

The absence of any medical or psychiatric treatment at WRGH is not surprising, given the guarded prognosis for rehabilitation and recommendation for "administrative disposition" of

your case by Dr. Franklin. Once again, I believe that the outcome of your hospitalization at WRGH represented an error in the diagnosis and medical management of your case. Had you been diagnosed as having an anxiety disorder and treated appropriately for it, I believe there would have been a favorable prognosis for remission of your symptoms, allowing you to return to your military duties.

I believe the notation in the transcript "no audible response" to a question by Mr. Kabatchnick concerning whether I thought your condition was in the line of duty (LOD) or whether it had existed prior to service (EPTS) reflected my uncertainty as to whether or not I had fully understood his question. I did clarify my opinion on those questions on the bottom of p. 204, "I think ... he was clearly in the performance of his military duties (LOD) and ... I doubt that it (the condition of abuse of alcohol, manifested by

excessive alcoholic intake under stressful situations) existed prior to service."

Finally, you asked me to clarify my response to a Board member (Mr. Hobbs) asking me to comment on whether your seeking justice and fair treatment from the Army via your petition to the ABCMR amounted to "a crusade". I found may reply on a page numbered "215B": "I don't know whether he thinks of himself as a crusader. I think he may well function in that capacity, in terms of how diligent he's been in persevering in bringing his case to the attention of authorities".

I trust my answers to your specific questions about my testimony and my reiteration of my original findings and opinions about your 1961-62 illness have been responsive to your inquiries and will serve your best interests in the future. As I've mentioned to you in a recent phone conversation, I am now retired from practice and have only very limited time to devote to letter-summaries such as this. I hope your life

goes well and that your efforts to find relief from the unfortunate reversal of the ABCMR's decision by the Army are successful.

Cordially,

George W. Roark

August 6, 1991

TO WHOM IT MAY CONCERN

During the period August 1960 to October 1962 I was the Air Operations Officer (S-3 Air) for the 2nd Airborne Battle Group, 503rd Infantry (Reinforced) stationed on the island of Okinawa, Japan.

As S-3 Air it was my duty to plan, coordinate and execute all paratroop operations. This included working very closely with the U.S. Air Force for the scheduling, manifesting and loading of all Air Force aircraft to lift the 2/503rd and its attached elements whether it be for parachuting or air landed operations.

Each year during typhoon season, from July through October, the scheduling of aircraft was most difficult due to weather conditions in the South China Sea area. During the three preparatory phases for typhoons certain actions were taken by all elements of the Armed Forces stationed on the island. "Typhoon Condition 2"

dictated that all U.S. aircraft be evacuated from Okinawa to safe havens. This evacuation could and often did last for a period up to two weeks depending on the severity of the storm. Any operations (routine or special; such as a jump in honor of the patron saint of paratroopers - St. Michael) requiring aircraft already scheduled were canceled by the Air Force as was the case many times.

Should additional information as to airborne operations during the above mentioned time frame be required, please feel free to contact me at (509) 586-9614.

Very Respectfully,

Thomas J. Kelly

LTD U.S. Army (Retired)

August 21, 1991

TO WHOM IT MAY CONCERN

During the period August 1960 to October 1962 I was the Air Operations Officer (S-3 Air) for the 2nd Airborne Battle Group, 503rd Infantry (Reinforced) stationed on the island of Okinawa, Japan.

As S-3 Air it was my duty to plan, coordinate and execute all paratroop operations. This included working very closely with the U.S. Air Force for the scheduling, manifesting and loading of all Air Force aircraft to lift the 2/503rd and its attached elements whether it be for parachuting or air landed operations.

Each year during typhoon season, from July through October, the scheduling of aircraft was most difficult due to weather conditions in the South China Sea area. During the three preparatory phases for typhoons certain actions were taken by all elements of the Armed Forces stationed on the island. "Typhoon Condition 2"

dictated that all U.S. aircraft be evacuated from Okinawa to safe havens. This evacuation could and often did last for a period up to two weeks depending on the severity of the storm. Any operations requiring aircraft already scheduled were canceled by the Air Force as was the case many times.

Additionally, during Typhoon Condition 2, women in late stages of pregnancy, were required to go to Camp Kue Army Hospital to ride out the storm. Extremes in barometric pressure could induce labor and early delivery; plus, very high winds and driving rain prevented getting to the hospital during a typhoon. During September 1961, my wife expecting our second child, was required to go to the hospital because of a pending typhoon. Subsequently, on September 23, 1961, our second son was born which was a week after the typhoon hit the island. This same typhoon caused the evacuation of all aircraft from the island and cancellation of a parachute operation. This

special parachute operation was scheduled to honor Saint Michael, the patron saint of all paratroopers, and was to have taken place on our about September 17, 1961. This particular parachute operation was coordinated very closely by me with our Catholic Chaplain, Reverend Edward Cowhig. Father Cowhig was to have said Mass and conducted other religious services at the assembly area upon the completion of the drop. This could not take place because the Air Force had evacuated all aircraft and weather conditions were prohibitive.

Should additional information as to airborne operations during the above mentioned time frame be required, please feel free to contact me at (509) 586-9614.

Very Respectfully,

Thomas J. Kelly

LTC U.S. Army (Retired)

8/23/91

My Dear Father Ed,

What a wonderful surprise the other night when you called. It was certainly a bolt from the blue.

In July I was in D.C. for a Health Physics convention and met with several of my West Point classmates at the Army-Navy Club. After lunch, George Law and I walked to the metro station. During this stroll George talked to me about the troubles you had with the Army so I then knew for the first time in all these years, you had been screwed by someone somewhere along the line.

I was most happy to write the letter; however, the first one I wrote the dates were not clear in my mind. Thanks for refreshing my memory.

This will be short this time as I want to get this in the mail. I hope the enclosed letter will help if not, let me know and I'll keep trying until I get it right.

Thank you so much for calling, it was terrific to renew an old and dear friendship and to know you're alive and kicking.

God Bless!

Tom

JOHN ANTHONY DAY, JR. M.D.

PULMONARY DISEASE

INTERNAL MEDICINE

2100 DORCHESTER AVENUE 4 NORTH, BOSTON, MA 02124

1157 HANCOCK STREET, QUINCY, MA 02169

436-3786

October 31, 1991

To Whom It May Concern:

RE: Fr. Edward D. Cowhig

As Fr. Cowhig's attending physician at the present time he asked me to review a large sheaf of records relating to his military career as a Chaplain in the early 1960's. I have done so and have also reviewed large portions of testimony during a hearing on the subject and have also studied in detail several letters which deal with the issue of whether or not this man was an alcoholic during the time of his service in the military.

Let me state at the outset that at the present time Fr. Cowhig is a robust, quite healthy 72 year old man who has been without alcohol intake for approximately 15 years and smokes occasional cigars. He essentially has no medical problems, other than the fact that he is somewhat overweight and he has mild hypertension. He leads a quite full life and is very involved in numerous social and church activities. I had several visits with him in the office and he struck me as a person who is quite outspoken and quite opinionated. He has a personality which was well described in one of the records as a "hail fellow-well met" type of personality. At the present time he has absolutely no signs whatsoever of stigmata of alcoholism and his liver function tests are entirely within normal limits.

My review of his various hospital admissions and the surrounding testimony as to whether or not this man was someone who had an alcohol problem can be summed up in the following way:

Fr. Cowhig appears to have been a person who bore the responsibility of his men somewhat heavily; felt deeply for them emotionally, and appeared to have been quite vocal about that responsibility. He also appeared to have been an occasional alcohol user and there is some implication that at times of heavy stress he may have had more than his usual one or two beers -- up to as many as three or four beers at a given time.

At no point during any of his hospitalizations is there effective and state of the art evidence that this man was a true alcoholic or that his judgment and ability to perform his duties were impaired by his alcohol intake. In fact, he seemed quite able to deal with his duties, although he was under a great deal of pressure and did feel the strain of responsibility for his men.

During the several admissions his liver function tests were essentially unremarkable. He

showed no stigmata of chronic alcoholism; specifically, palmar erythema, spiders, and only on one occasion did he appear slightly tremulous, but this could have been due to severe anxiety as well. At no point did he ever have delirium or hallucinosis. It is also strange that at no point can I find a record of an alcohol level, which was apparently able to be done with the technology available at that time, in the chart. The only hard evidence that I can find that this man had physical evidence of alcohol use was that his liver was noted to be 2-3 finger breadths below his right costal margin. As any physician can tell you, this is often a normal variant and, surprisingly, there was no mention of the total span of his liver, which can easily be done by percussion. In fact, my own liver is easily palpable 2-3 finger breadths below the right costal margin and I have, on the average, one beer every two or three weeks. I think this is flimsy evidence, indeed, for an alcohol problem.

In addition, perhaps even more surprising is that despite the fact that there was substantial diagnosis of alcoholism made, mostly by indirect means and oblique references, there is no mention of him ever having undergone any treatment for the same. I did not find that he ever had evaluation by a competent psychiatrist trained in anxiety disorders related to alcoholism or with a physician experienced in dealing with alcohol problems. This is surprising, given the fact that this probably comes up a great deal in the military and there are, presumably, experts available who are competent to make a diagnosis of alcoholism and alcohol related disorders. However, it hardly seems fair to the man to have given him a retrospective diagnosis of alcoholism based on the fact that his liver span was 2-3 finger breadths below his right costal margin, which even, according to the standards of medicine in the 1960's would be flimsy evidence indeed for this. However, more shocking is the fact that I

can discern in his records no attempt whatsoever for any treatment of this alleged problem.

My overall sense, having gone over these records, is that held to the standards with which we diagnose and treat patients with alcoholism today, there is absolutely no evidence whatsoever that this man had an alcohol problem, nor even according to the standards of medicine being practiced in the 1960's would I consider his evaluation acceptable. Together with this, the fact that he received no treatment for this alleged problem only adds insult to injury. In my daily practice as an intensive care unit physician, I come face to face almost daily with patients who have various types of alcohol related problems. The fact that this man was treated in this fashion regarding an unproven diagnosis and not treated seems a travesty to me.

My qualifications are as follows: I graduated from Harvard College in 1973 and went to medical school at Cornell University Medical

College. I am Board Certified in Internal Medicine, Pulmonary disease and Critical Care Medicine. Other than having seen many patients with alcohol related disorders in the course of my training and medical practice, my qualifications for making determination as to the nature of his alcohol problems may not be as extensive as some others. However, it would seem only fair to this gentleman, who has invested so much time and energy in this cause, to have his case reviewed by any of a number of well recognized alcohol experts. Over the past ten years alcoholism and alcohol related disorders have received renewed attention in the American College of Physicians and Internal Medicine physicians in general. There are any number of alcohol experts now practicing, even in my own local area.

If I can be of further help, I would be glad to talk to anyone about his, <u>but my overall impression, having reviewed these records, is that Fr. Cowhig is a victim of a travesty which has</u>

been perpetuated by a large and over generous sheaf of poorly documented records. In my mind this is not even a close call from the evidence I have been resented with and this man would never be considered somebody who had a significant alcohol problem at the present time.

Thank you for your attention to this matter.

John A. Day, Jr., M.D.

JAD/pas

SUBJECT: Chaplain (Captain) Edward D. Cowhig
075056

11 October 1961

To: Chief of Chaplains
Department of the army
Washington 25 D.C.

1. Chaplain (Captain) Edward D. Cowhig, 075056, was transferred from the 2d Airborne Battle Group, 503rd Infantry Combat Team to the Medical Holding Detachment, U.S. Army Hospital, Ryukyu Islands, due to incapacitating himself by excessive drinking. Chaplain Cowhig had been a patient in the U.S. Army Hospital for three weeks prior to his evacuation. His relief from duty in this command and his return to the United States are the result of repeated acts of misconduct unacceptable in any commissioned officer.

2. This letter provides information supporting Chaplain Cowhig's relief from this command for cause. The facts are as follows:

a. He was admitted to the U.S. Army

Hospital on 8 July 1960 as a result of excessive drinking. He was retained in the hospital until 19 July 1960. Prior to his admission to the hospital he had been incapable of performing his duties for approximately four days;

b. He was readmitted to the hospital for the same reason on 2 February 1961 and was discharged on 10 February 1961;

c. In July 1961 he was treated in his quarters by his unit medical officer, again being incapacitated by excessive drinking. At this time the Chief of Neuro-Psychiatric Service informed his commanding officer that there was a chance for rehabilitation if Chaplain Cowhig would agree to participate in group therapy on an out-patient basis and become an active member of Alcoholics Anonymous. His commanding officer stated that Chaplain Cowhig agreed to follow this recommendation. On this basis he was therefore restored to duty. He failed, however, to follow the prescribed course of treatment, attending only

a few group therapy sessions. He made no attempt to associate himself with the Alcoholics Anonymous program;

d. On 15 August 1961, a Day of Obligation for Roman Catholics, he was scheduled to hold three services. He spent the day at the Officer's Rest Center and fulfilled none of his duty obligations;

e. During the week of 10 September, he became progressively more intoxicated, again requiring the care of his unit medical officer in his quarters. On the night of 18 September he was again admitted to the hospital where he was maintained in the Neuro-Psychiatric Service until his evacuation to the United States on 6 October 1961;

f. On 16 September while under the care of his unit medical officer it became obvious that he would not be able to perform his duties on Sunday, 17 September, thereby necessitating the cancellation of his Sunday services and a widely

publicized mass parachute jump by over 300 members of his Saint Michael's Society, which was to have been followed by a field mass in the drop zone;

g. He has been uncooperative with and resentful of the efforts of the senior Catholic chaplain, who has the responsibility of coordinating the Catholic program for the command. He could not be relied upon to take assigned duties, if these involved activities outside of his own unit;

h. He has failed either to understand or to accept the responsibilities of a commissioned officer to his unit and to his men:

(1) He had been warned on a number of occasions by his commanding officer that continued excessive drinking would result in his release from duty. He would not need this warning and as a result of his unreliable and unacceptable conduct he has left his unit, an airborne combat team with an emergency type mission in this critical area, without a Catholic chaplain and

with no qualified replacement immediately available in the event that his unit must be deployed;

(2) The pride and esteem that airborne soldiers have in their "jumping chaplains" is well known. The lowered morale and disillusionment of the men in Chaplain Cowhig's unit result from his misconduct necessitated his relief. Failure to indicate the true reason for his relief would compound the error already made by Chaplain Cowhig.

3. Further information will be included in Chaplain Cowhig's final efficiency report from this command which is being forwarded at this time.

PAUL W. CARAWAY

Lieutenant General United States Army

Commanding

Your Eminence:

In reference to this former chaplain about whom Your Eminence kindly spoke to me this afternoon might I offer the following comments:

In our judgment he does not possess what we might term "constant stability". He would be perfectly fine for about five months and then there would be some instance of alcoholism, which impaired his priestly functions, with a certain amount of scandal in each case.

It is true that the priest does think that the charges were exaggerated, but we are inclined to believe that a three star general would not send a letter of complaint unless he was certain of the facts.

On October 11, 1961 a three star general on Okinawa wrote a letter to the Chief of the Army Chaplains in Washington concerning this priest. The very first paragraph states that the priest was transferred from his Battle Group to the Army Hospital "due to incapacitating himself by

excessive drinking. He was evacuated to the United States by air on 6 October 1961. He had been a patient in the U.S. Army Hospital for three weeks prior to his evacuation. His relief from duty in this command and his return to the United States are the result of repeated acts of misconduct unacceptable in any commissioned officer.

"This letter provides information supporting his relief from this command for cause. The facts are as follows:

"He was admitted to the U.S. Army Hospital on 8 July 1960 as a result of excessive drinking. He was retained in the hospital until 19 July 1960. Prior to his admission to the hospital he had been incapable of performing his duties for approximately four days.

"He was readmitted to the hospital for the same reason on 2 February 1961 and was discharged on 10 February 1961.

"In July 1961 he was treated in his quarters by his unit medical officer again being incapacitated by excessive drinking. At this time the Chief of Neuro-Psychiatric Service informed his commanding officer that there was a chance for rehabilitation if he would agree to participate in group therapy on an out-patient basis and become an active member of Alcoholics Anonymous. His commanding officer stated that he agreed to follow this recommendation. On this basis he was therefore restored to duty. He failed, however, to follow prescribed courses of treatment, attending only a few group therapy sessions. He made no attempt to associate himself with the Alcoholics Anonymous program.

"On 15 August 1961, a Day of Obligation for Roman Catholics, he was scheduled to hold three services. He spent the day at the Officers Rest Center and fulfilled none of his duty obligations.

"During the week of 10 September, he became progressively more intoxicated, again requiring

the care of his unit medical officer in his quarters. On the night of 18 September he was again admitted to the hospital where he was maintained in the Neuro-Psychiatric service until his evacuation to the United States on 6 October 1961.

"He has been uncooperative with and resentful of the efforts of the senior Catholic chaplain, who has the responsibility of coordinating the Catholic program for the command. He could not be relief upon to take assigned duties, if these involved activities outside of his own unit.

"He has failed either to understand or to accept the responsibilities of a commissioned officer to his unit and to his men.

"He had been warned on a number of occasions by his commanding officer that continued excessive drinking would result in his release from duty. He would not heed this warning and as a result of his unreliable and unacceptable conduct he has left his unit, an airborne combat team with an

emergency type mission in this critical area, without a Catholic chaplain and with no qualified replacement immediately available in the event that his unit must be deployed.

"The pride and esteem that airborne soldiers have in their "jumping Chaplains" is well known. The lowered morale and disillusionment of the men in his unit result from his misconduct necessitated his relief. Failure to indicate the true reason for his relief would compound the error already made by him."

Under date of February 10, 1961, a fellow-priest in Okinawa wrote to us as follows about this priest:

"He has had a problem for a long time with regard to drink. When normal, he appears to have no psychiatric problem. When under the influence of alcohol, he appears to be driven by some compulsive force which makes him say things he ordinarily would never say. It is undoubtedly a

very deep-rooted mental problem which comes to the surface at these moments.

"When the 503rd arrived here last June-July 1960, we were so very happy because we felt we now had a priest who would go "All the Way" for Christ and the Church. "All the Way" is the slogan of the 503rd. He with his magnificent physique appeared to be the man. Shortly thereafter, however he went on a binge and finally ended up in the hospital. Fully recovered, after a few days he returned with great vim and vigor to his job. He did magnificently. Then in October he broke down again -- this time for nearly two weeks. With the help of an air force doctor (to keep it out of army channels) we finally got him back on his feet. Now he is down again and this time hospitalized for the second time. He is being released today and supposedly will return to duty with the 503rd. I do not believe that this case has become a source of scandal, as yet, but there are those who know of it. If any further incident

occurs, I would feel obligated in conscience to call Washington."

In view of the above, I felt it justified in writing a personal note to him on October 31, 1961 asking him to resign.

He came here a few weeks later and we discussed the case for an hour or two but I still felt it was the pars tutior to have him return to his Archdiocese.

On January 8, 1962, Bishop Furlong saw him here because he still wished the Ordinariate to change its position. Bishop Furlong's memorandum in the file states in part: "The record seems clearly to indicate that his resignation is definitely in order. Psychiatric treatment may be desirable."

Respectfully submitted,

Sept. 28, 1962 J. S. Murdoch

DEPARTMENT OF THE ARMY

OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON 25, D.C.

Apr 6, 1964

Honorable John W. McCormack

Speaker of the House of Representatives

Dear Mr. Speaker:

This letter is in reply to your inquiry in behalf of Reverend Edward D. Cowhig, who communicated with you concerning his desire to return to extended active duty as a chaplain with the Army.

On 16 November 1950 Father Cowhig was appointed a chaplain in the Army Reserve, with the rank of first lieutenant. He entered on extended active duty on 2 January 1951 and was promoted to the rank of captain, Army of the United States, on 25 June 1954. On 19 December 1956 he was appointed a captain in the Regular Army, with a date of rank of 2 January 1955. On 7 November 1961, he submitted his unqualified resignation

from the Army, which was approved on 27 November 1961 with final separation effective 23 January 1962.

It is true that Chaplain Cowhig was requested by His Eminence, Francis Cardinal Spellman, Chaplain Cowhig's ecclesiastical superior, to submit his resignation. Chaplain Cowhig acquiesced, though reluctantly. The record shows that if Chaplain Cowhig had not tendered his resignation, the Military Ordinariate, which Cardinal Spellman heads in his capacity as Military Vicar for Catholic chaplains and military personnel and their dependents in the United States Armed Forces, would have withdrawn its ecclesiastical endorsement of the chaplain. Without such an endorsement a chaplain may not exercise his spiritual duties with the military.

The immediate or proximate reason for the action was a report from Lt. General Paul W. Carraway, Commanding General, USARYIS/IX Corps and High Commissioner, Ryukyu Islands, to Cardinal

Spellman with regard to a series of incidents in Okinawa, where Chaplain Cowhig was assigned. These incidents involving Chaplain Cowhig were in the nature of repeated alcoholic intemperance, a trait most unacceptable in any Army officer and certainly not to be countenanced in a chaplain. As a result, Chaplain Cowhig was unable to perform his duties, became despondent, and had to be hospitalized on three occasions. Finally, he was evacuated from Okinawa to Walter Reed Army Medical Center, Washington, D.C., where he submitted his resignation after a short period of hospitalization.

Chaplain Cowhig's military career was outstanding, aside from the deficiency noted above. While he claims that the charges made by Lieutenant General Carraway were exaggerated and were due to a misunderstanding, a review of the chaplain's complete record reveals that the same charges were made by his immediate commanding officer and by the officer who endorsed his

efficiency report. Further examination shows that happenings in Okinawa were not isolated incidents; there were similar lapses in Germany in 1956. Accordingly, it was concluded that there had developed in this case a pattern of conduct not in keeping with the high estate chaplains have and must have in the armed forces.

Since Chaplain Cowhig's resignation two years ago, the Chief of Chaplains has determined on several occasions, and as recently as this past week,that the Military Ordinariate will not issue an ecclesiastical endorsement for the return of Chaplain Cowhig to extended active duty as a chaplain with the Army. In this decision the Chief of Chaplains concurs.

I trust this information will be of assistance to you in your reply.

Sincerely,

Enclosure

FRED C. WEYLAND
Major General, GS
Chief of Legislative Liaison

DEPARTMENT OF THE ARMY

OFFICE OF THE CHIEF OF CHAPLAINS

WASHINGTON, D.C. 20315

IN REPLY REFER TO:

CHPE (15 Mar 67) 15 March 1967

The Reverend Edward D. Cowhig

245 Chief Justice Cushing Highway

Greenbush, Massachusetts 02040

Dear Father Cowhig:

We are returning portions of your application for appointment and active duty in the Army Chaplaincy.

We sincerely appreciate your motivation and desire to serve in the Army Chaplaincy and are genuinely sorry that circumstances do not permit your appointment and service.

Please be assured that we wish you every joy and success in your civilian ministry.

FOR THE CHIEF OF CHAPLAINS:

for Gerard Gefell

JAMES H. CRANFORD

Chaplain (Colonel), USA

Personnel & Ecclesiastical

Relations

1 Encl

Application Papers

Military Ordinariate

UNITED STATES OF AMERICA

30 EAST FIFTY-FIRST STREET

NEW YORK, N.Y. 10022

Telephone: (212) Eldorado 5-3457

April 2, 1968

Dear Cardinal Cushing:

It is my honor to acknowledge the letter of Your Eminence dated March 28th concerning my friend, Father Edward D. Cowhig.

It is with regret that I write that Father Cowhig cannot be a chaplain. It is my understanding that Father Cowhig could not obtain a "security clearance" from the F.B.I.

With sentiments of highest esteem and looking forward to seeing Your Eminence on Thursday, I remain

Respectfully in Christ,

Joseph F. Marbach

Chancellor

His Eminence

Richard Cardinal Cushing

Archbishop of Boston

DEPARTMENT OF THE ARMY

OFFICE OF THE CHIEF OF CHAPLAINS

WASHINGTON, D.C. 20315

IN REPLY REFER TO:

CHPE (18 Mar 68) 18 March 1968

The Honorable John W. McCormack

The Speaker of the House of

Representatives

Washington, D.C. 20510

Dear Mr. Speaker:

This is with reference to our several telephone conversations concerning the application of Father Edward D. Cowhig for a commission as a chaplain in the Army.

I am sorry the Chief of Chaplains, Major General Francis L. Sampson, was out of town at the time of your most recent call. He would have been pleased to speak with you. Our conversations and this letter will be brought to his attention as soon as he returns.

Mr. Speaker, each candidate for the Army Chaplaincy must be endorsed by the appropriate authority of his church before we can offer him a commission. In the case of Catholic priests, the Military Ordinariate, 30 East Fifty-first Street, New York City, acts for the Military Vicar to endorse candidates.

Father Cowhig's endorsement has not been renewed by the Military Ordinariate since it was withdrawn on 27 January 1967. He would have to have that endorsement before we could process his case any further. This is a requirement which the Army cannot waive since Father Cowhig would not be in a position to serve as a priest in the Army without the ecclesiastical credentials of his Church.

ARCHDIOCESE OF BOSTON

2121 COMMONWEALTH AVENUE

BRIGHTON, MASSACHUSETTS 02135

OFFICE OF THE CARDINAL

December 8, 1977

Rev. Edward D. Cowhig

245 Cushing Way

Greenbush

Scituate, Massachusetts 02066

Dear Father Cowhig:

I write to acknowledge your letter to me of November 29, 1977 and the copies of documents which you enclosed concerning your actions and relationships with the United States Army and the military Ordinariate over the last 15 years. I note that you have sent a copy of this material to Bishop Daily at the Chancery Office.

I have to assume that correspondence between Lieutenant Carraway and Cardinal Spellman as noted in your letter is private correspondence and not to be released by the Military Ordinariate.

Thus,I would feel presumptuous in making the request. The matter must remain your own responsibility.

As ;you know,my concern is for your active ministry in the Archdiocese of Boston and I wish to assist in any way possible to accomplish that end.

Enclosed are your checks for the months of October and November.

With every good wish and prayerful remembrance, I am

Devotedly yours in Our Lord,

Humbert Cardinal Medeiras

Archbishop of Boston

Enclosure

2 MAR 1978

Honorable Thomas P. O'Neill, Jr.

Speaker of the House of Representatives

Dear Mr. Speaker:

This applies to your inquiry in behalf of Reverend Edward D.Cowhig ???? CONCERNING (EAC) his desire to locate certain correspondence which he believes to be on file in his official military personnel record.

Examination of Reverend Cowhig's official Army military record fails to enclose DISCLOSE (EPC) any correspondence from Lieutenant General Paul Carraway to ??? OFFICIALS (EAC) in the Department of the Army or to Cardinal Spellman.

Sincerely,

Enclosure

CHARLES L. MOORE

Lieutenant Colonel, USA

Deputy, Congressional

Correspondence Agency

Mr. Robert E. Larkin

158 Main Street

Norfolk, MA 02056

Dear Mr. Larkin:

I regret this delay in writing to you in answer to your gracious letter of March 31st about Fr. Edward Cowhig.

As you can guess, I delayed writing because I do not like to give any comments against a priest. Fr. Cowhig telephoned this morning and I promised to write to you.

Enclosed is a copy of my letters to Fr. Cowhig of Nov. 1, 1975 and of Nov. 13, 1975 which I think are self-explanatory.

<u>As you will agree, no three-star general would sign a two-page-single-spaced report against a chaplain unless he was certain of the facts.</u>

With kind regards, I remain

Sincerely yours in Christ,

Joseph F. Marbach

Chancellor

8 MAY 1980
SUSPENSE DATE

Honorable Paul Tsongas
United States Senate

Dear Senator Tsongas:

This is in reply to your inquiry in behalf of Father Edward D. Cowhig, concerning his application for correction of military records.

Enclosed for your information is a copy of the Board's letter to Father Cowhig which is self-explanatory concerning the Board's most recent action in his case.

The questions raised in your letter of 11 June 1980 are indirectly responded to by the enclosed memorandum. However, the thrust of your questions indicates a belief or understanding that Father Cowhig's separation was based solely on a letter purportedly written by LTG Carraway. The letter is in the church files and the authenticity can be determined only by the church officials. The Board did not, in this instance or in previous consideration, base their decision to deny him a formal hearing solely on the basis of that letter.

The decision was based on the evidence which clearly showed Father Cowhig's alcoholism had seriously impaired his judgment. His alcoholism would have, in a very short time, in the Board's opinion, resulted in his being involuntarily separated from the U.S. Army for failure to properly perform his duties.

Your interest in Father Cowhig's case is appreciated.

Sincerely,

Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

Enclosure
As stated

EXHIBIT A

UNITED STATES COURT OF CLAIMS

EDWARD D. COWHIG,

Petitioner

v. NO. 427-80C

UNITED STATES

OF AMERICA,

Defendant

AFFIDAVIT OF EDWARD D. COWHIG

I, Edward D. Cowhig, do depose and state:

1. That I had, on my own, drafted and sent to the Army Board for the Correction of Military Records a form DD149, seeking correction of my records.

2. I had clearly and consistently indicated to the staff of the Board, to whom I addressed preliminary and supplemental letters in completing the forms, that I wished to nullify my discharge of January, 1962. Cf. Letter of December 11, 1973, herein appended.

3. On the day of my Board hearing,

while walking down the corridor to the hearing room, I was told by Examiner Edward C. Gibson, that it would be best for my case to not ask the Board to declare my discharge null and void. I was told that I should use more indirect language and restrict my appeal to "involuntary separation". I was told by Mr. Gibson that refraining from making such a direct request would help my cause, and that if I claimed nullity and invalidity, they may say that they do not have competence or jurisdiction.

4. I had told Mr. Gibson, and I have stated to all, before and since, that I wished to cancel out, wash out, nullify, vacate, annul or whatever similar expression conveys the same, my resignation of January, 1962, since it came from pressure brought on me by religious superiors that came through false and misleading statements.

Sworn to this 28 day of February 1981.

EDWARD D. COWHIG

Sworn before me, this 28th day of February, 1981.

Michael T. Loring

NOTARY PUBLIC

Commission Expires: 7/25/86

APPENDIX ONE TO EXHIBIT F

EDWARD D. COWHIG,

Petitioner

v. NO. 427-80C

UNITED STATES

OF AMERICA,

Defendant

AFFIDAVIT OF EDWARD D. COWHIG

I, Edward D. Cowhig, do depose and state:

1. In regard to Exhibit F in my reply to the defendant's motion to dismiss or, in the alternative, for summary judgment, I assert that the first time I have been allowed to have a copy of this purported letter was 4 August 1980.

2. I further assert, following the schema/form of the letter of 11 October 1961, written after I had left Okinawa, the following sections and/or paragraphs of it to be:

1. False

2. False

EDWARD D. COWHIG,

Petitioner

v. NO. 427-80C

UNITED STATES

OF AMERICA,

Defendant

AFFIDAVIT OF EDWARD D. COWHIG

I, Edward D. Cowhig, do depose and state:

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1. False

2. False

EDWARD D. COWHIG,

Petitioner

v. NO. 427-80C

UNITED STATES

OF AMERICA,

Defendant

AFFIDAVIT OF EDWARD D. COWHIG

I, Edward D. Cowhig, do depose and state:

1. EDWARD D. COWHIG,

Petitioner

v. NO. 427-80C

UNITED STATES

OF AMERICA,

Defendant

AFFIDAVIT OF EDWARD D. COWHIG

I, Edward D. Cowhig, do depose and state:

1. In regard to Exhibit F in my reply to the defendant's motion to dismiss or, in the alternative, for summary judgment, I assert that the first time I have been allowed to have a copy of this purported letter was 4 August 1980.

2. I further assert, following the schema/form of the letter of 11 October 1961, written after I had left Okinawa, the following

sections and/or paragraphs of it to be:

1. False

2. False

(a) False

(b) False

(c) False

(d) False

(e) False

(f) False

(g) False

(h) False

1. False

2. False

Sworn to this 28 Day of February 1981,

Edward D. Cowhig

EDWARD D. COWHIG

Sworn before me this 28th day of February, 1981

Michael T. Loring

NOTARY PUBLIC

Commision Expires: 7/25/86

DEPARTMENT OF THE ARMY

OFFICE OF THE ADJUTANT GENERAL

WASHINGTON, DC 20310

8 May 86

REPLY TO ATTENTION OF

Executive Office

Mr. Edward D. Cowhig

Greenbush, Massachusetts 02040

Dear Mr. Cowhig:

This is in reply to your April 28, 1986 letter to The Adjutant General's Office requesting information under the Freedom of Information Act.

The Office of the Chief of Chaplains is the proper agency to respond to your inquiry, therefore I have taken the liberty of forwarding your letter to that office. Their address is indicated below.

Thank you for your inquiry, I hope this information is useful to you.

Sincerely,

William J. Carr

Major, GS

Executive Officer

Copy Furnished:

Department of The Army

Office of the Chief of Chaplains

ATTN: DACH-AMB

Washington, D.C. 20310

Clerk of Court

United States District Court

U.S. Post Office and Court House

Boston, MA 02109

RE: 90-11297WF

MOTIONS FOR AMENDMENT OF JUDGMENT UNDER RULE 52(b) F.R.C.P.; RIGHT OF TRIAL BY JURY, RULE 38(a)(b); NEW TRIAL AND AMENDMENT OF JUDGMENTS, RULE 59; RELIEF FROM JUDGMENT OR ORDER, RULE 60(a)(b).

I have not to this date received any official notice as to any orderor judgment, but have received this information over the telephone.

The reasons for the above motions are:

1. The absence of any trial by jury. This right was sought in papers presented, even though not by a specific motion for demand as such and this possible procedural defect should not be considered a waiver of my constitutional rights under the Seventh Amendment.

2. New evidence and evidence not previously

considered by any Court or administrative body which goes to the heart of the case and which demonstrates conclusively the falsity of previous allegations, charges and indictments in whatever form or forum in which they may have appeared.

3. The absence of any reasonable opportunity to discover the authenticity or non-authenticity or a putative "official" document containing the original charges of misconduct conducive to subsequent actions by both Church and State. Yet this document has been utilized by both entities as a basis for their actions in both administrative hearings and judicial procedures, without even the semblance of any "due process procedure."

4. The continuing and continuous behavior of the government in denying access to information in violation of the Freedom of Information Act and Equal Access to Justice Act.

I move for relief from judgment or order under rule 60(b) (1) (2) (3) on the grounds of

continuing fraud, malice, misconduct on the part of the government in the suppression of evidence, bad faith in the denial of reconsideration by the Army Board for the Correction of Military Records (ABCMR), thereby removing new medical evidence from judicial review.

I also move that the stipulations of Title 5 U.S.C. 701-706 be adhered to, especially 5 U.S.C. 706(2) which calls for a review of the "whole record" and "due account shall be taken of the rule of prejudicial error."

I also enclose an extract from the new 1991 book of Clark Clifford, "Counsel to the President" which indicates the geopolitical military stress and strain of the 1960-61 period and the necessarily concomitant stress and strain placed on those required to implement "Top Secret" operations, then planned and of which I was a part, and the only Catholic paratrooper priest in the entire Pacific area. I have been and still am required by security regulations to be silent.

Once more an andabate!

I still plead for a full and fair hearing which I have been denied so far, despite the ill founded repetition of the mantra "res judicata" or "statute of limitations."

The Archdiocese for Military Service, U.S.A., though a co-defendant in my original complaint as a joint tort feasor in collusion, should now be joined to me as a plaintiff, as they were the recipients of a false report in 1961, acted on it as if true, and though denying me access to essential documents, hence "due process", have been passive in recent years. They were the ones to whom lies were transmitted. Now the government tries to assert that my church has proper custody of the disputed "official" document. To me this is nonsensical and unjust.

Sincerely

Edward D. Cowhig

245 C.J. Cushing Highway

Greenbush, MA 02040-0154

cc: Ass't U.S. Attorney

Atty. Gary Busek

BILL OF RIGHTS

Article I

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or

in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

Article XIV

All persons born or naturalized in the US and subject to the jurisdiction thereof are citizens of the US and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

10 U.S.C. 3784: Removal of officer: Action by Secretary of the Army upon recommendation

The Secretary of the Army may remove an officer from the active list of the Regular Army for any cause that he considers sufficient, if removal for that cause is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. Aug. 10, 1956, c. 1041, 70A Stat. 219.

10 U.S.C. 3785: Rights and procedures

(a) Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be--

(1) notified in writing of the pendency of any proceeding for his removal;

(2) allowed reasonable time to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry and a board of review; and

(4) allowed full access to, and furnished

copies of, records relevant to his case at all stages of the proceeding.

(b) No person may be a member of more than one board convened under this chapter for the same officer. Aug. 10, 1956, c. 10412, 70A

10 U.S.C. 1185: Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty--

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

1961 Definitions

As used in this chapter (18 U.S.C./96/et seq.) (1) "racketeering activity" means (a) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, which is chargeable under State Law and punishable by imprisonment for more that one year; (b) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472 and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling

information), section 1341 (realting to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal law enforcement), section 1951 (realting to interference with commerce, robbery, or extortion), section 1952 (realting to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955

581.3 32 C.F.R.

Access to Records: (1) The applicant will be assured access to all official records that are necessary to an adequate presentation of his case consistent with regulations governing privileged or classified material. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Army as he desires to present in support of his case.

SCOPE OF REVIEW

TITLE 5 U.S.C. 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(a) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(d) without observance of procedure required by law;

(e) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of and agency hearing provided by statute; or

(f) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the courts shall review the whole record or those

parts of it cited by a part, and due account shall be taken of the rule of prejudicial error.

(b) Criteria for Ecclesiastical Endorsing Agencies: (1) religious faith groups that seek to become ecclesiastical endorsing agencies for the purpose of certifying the professional qualifications of clergy for appointment as chaplains in the Military Services shall obtain DoD recognition through the action of the Armed Forces Chaplains Board (AFCB). To be considered for DoD recognition each religious faith group shall:

(i) Be organized exclusively or substantially to provide religious services to a lay constituency.

(ii) Be able to exercise ecclesiastical authority to grant or withdraw ecclesiastical endorsements.

(iii) Be able to provide continuing validation of ecclesiastical endorsements.

(iv) Be able to endorse clergy who are qualified to provide for the free exercise of religion by all members of the Military Services,

their dependents, and other authorized persons.

(v) Abide by the applicable regulations and policies of the Department of Defense.

PART 510 - CHAPLAINS

510.1 Private Ministrations, Sacraments, and Ordinances

Chaplains will conduct or arrange for appropriate burial services at the interment of members of the military service, active and retired, and for members of their families upon request. A chaplain may perform the marriage rite, provided he complies with the civil law of the place where the marriage is to be solemnized and provided all parties concerned have complied with the requirements of the denomination the chaplain represents and with any directives which may have been issued by the military command or higher headquarters. The scope of the chaplains' work will include such ministrations as are held by some denominations or religious bodies as sacraments and by others as rites or ordinances. Chaplains will administer or arrange for rites and sacraments for military personnel and civilians under military jurisdiction according to the

respective beliefs and conscientious practices of all concerned.

RULES OF CIVIL PROCEDURE

RULE 60 - Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the

judgment. The motion shall be made within a reasonable time, and for reasons (1), (20< and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C. 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987.)

RULE 1002: REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.

RULE 1003: ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

RULE 1004: ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if--

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original

can be obtained by any available judicial process or procedure,; or

(3) Original in possession of opponent. At a time when ad original was under the control of the party whom offered, that party was put on notice by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) Collateral matter. The writing, recording, or photograph is not closely related to a controlling issue.

ARMY REGULATION 15-815, PAR 22

Reconsideration: After final adjudication, further consideration will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Army.

UNITED STATE OF AMERICA

DEPARTMENT OF THE ARMY

Washington D.C.

17 Oct 80

I hereby certify that the attached is a true and exact copy of extracts of the Official Military Personnel File (OPMF) of Edward E. Cowhig, SSAN 016-14-7279, a record copy of which is in the temporary custody of the Military Personnel Branch, Litigation Division, Office of the Judge Advocate General, Department of the Army.

(signed)M. Scott Magers

M. SCOTT MAGERS

Major, JAGC

Chief, Military Personnel Branch

Litigation Division

I hereby certify that Major M. Scott Magers, JAGC, who signed the foregoing certificate, is the Chief, Military Personnel Branch, Litigation Division, Office of the Judge Advocate General, Washington, D.C., and that full faith and credit

should be given to his certification.

In testimony whereof I, CLIFFORD L. ALEXANDER JR., Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this 21st day of October, 1980.

(signed)Clifford L. Alexander, Jr.

Secretary of the Army

By (signed)Milton H. Hamilton

Administrative Assistant

COWHIG, EDWARD D.

016-14-7179

SFMR

Honorable Gerry E. Studds

Representative in Congress

1143 Washington Street

Hanover, MA 02339

Dear Mr. Studds:

This is in further reply to your inquiries in behalf of Father Edward D. Cowhig, concerning his application for correction of military records. Inclosed for your information is a copy of the Board's letter to Father Cowhig which is self-explanatory concerning the Board's most recent action in his case.

The Board's decision to not grant a second hearing in Father Cowhig's case was not base solely on the letter purportedly written by General Carraway and which is now properly in the files of the Military Ordinariate in New York City. The decision was based on substantial,

undisputed evidence that he was a practicing alcoholic in 1961, who choose not to abstain from the abuse of alcohol after being hospitalized on several occasions for treatment. His abuse of alcohol resulted in his being relieved of his duties and his being returned from overseas for treatment at the Walter Reed Army Medical Center. Your interest in this case is appreciated.

Sincerely,

(signed)Raymond J. Williams

Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

ARCHDIOCESE FOR THE MILITARY SERVICES, USA

(Ordinariatus Castrensis)

962 Wayne Avenue

Silver Spring, Maryland 20910

Telephone (301) 495-4100

19 May 1988

Father Edward D. Cowhig

St. Alphonsus Church

488 Elliott St.

Beverly, Ma. 01915

Dear Father Cowhig,

It was good to speak with you again yesterday on the telephone. I did not answer your correspondence earlier because I felt that there was nothing I could add to what Bishop Dimino had already written.

However, let me add now that we do not possess the original letter of Lieutenant General Caraway. This was apparently written to the Chief of Chaplains in military channels. We would not

possess such a letter nor are we the custodian of military records or documents.

I do wish you success always.

May the Lord bless you and give you His peace.

Fraternally,

s/Francis X. Roque

Auxiliary Bishop

DEPARTMENT OF THE ARMY

OFFICE OF THE UNDER SECRETARY

WASHINGTON, DC

15 October 1974

AG 201- Cowhig, Edward D.

016-14-7279

MEMORANDUM FOR THE ADJUTANT GENERAL:

Having approved the findings, conclusions and recommendation of the Army Board for Correction of Military Records, and under the provisions of 10 U.S.C. 1552, it is directed:

That all Department of the Army records of EDWARD D. COWHIG be corrected to show that he was involuntarily released from active duty under the provisions of Title 10 U.S.C. 3785, on 23 January 1962.

s/Herman R. Staudt

Under Secretary of the Army

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit (92-1440) which is herein sought to be reviewed is replicated in the appendix of this petition on pages 185-192, along with the opinion in the companion case (91-2027) (Appendix pp. 164-173).

The action of the United States District Court in this case number 11297-WF was filed under Title 18 U.S.C. 1961--racketeering (RICO) Act and was closed there by granting motion to dismiss 5 April 1991, entry date 26 April 1991, judgment date 2 July 1991. Motion to vacate entered on docket sheet 3 July 1991. Denial of that motion 5 August 1991--reconsideration denied 21 March 1992--filed post-judgment motion for appeal 2 April 1992 (App. p. 176).

First Circuit affirmed district court's denial (7 December 1992) of F.R.C.P. Rule 60(b) Motion.

The appellant's petition for rehearing and rehearing en banc denied 5 February 1993. Extension of time granted 31 March 1993 by Justice Souter to and including 5 July 1993.

JURISDICTION

The judgment of the United State Court of Appeals for the First Circuit (App. pp. 185-192) was entered 7 December 1992. Rehearing denied 5 February 1993 - extension granted by Justice Souter 31 March 1993 to and including 5 July 1993. The Jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. 1254(1). Appendix pp. 403, 404.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First, Fourth, Fifth, and Fourteenth Amendments concerning the "freedom of exercise" clause and "due process" and "freedom from unreasonable seizure," and "equal protection of the law" clauses.

STATEMENT OF GROUNDS

This pro se petitioner asserts that all the courts and agencies below have overlooked, ignored and/or obstructed the cause of justice in a case of constitutional proportions requiring strict scrutiny and in the presence of fraud, concealed fraud, misrepresentation to congress, compounded by the suppression of evidence and possibly fraud upon the Court itself. The denial of post judgment motion under Rule 60 seems to be an effort to crush this long, long struggle. See Appendix, pp. 428 and 429.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL PAGINATION IS NOT CONTINUOUS.

11th Abn Div, APO 112, NY, o/a 1 Mar 56. (66A)

2d Abn Btl Gp, 503d Inf, Ft Bragg, NC 28Mar60 (66A)

OVERUP 196D-OKINAWA

2d Abn Btl Gp, 503d Inf Combat Team, APO 50, SF, 10Jun60 (66A)

Being medically evacuated from Okinawa (to be RAD)

Evacuated via air 6 Oct 61 per TWX from CG USARYIS 7 Oct 61 (DA IN 660224).
MHD, Walter Reed Gen Hosp (3401.01), Wash. 12, DC 160ct61 (66A)

Appr of resignation to be eff ASAP sent to Sep Br 21 Nov 61.
(UP of para 2, AR 635-120)

RAD: 23 January 1962 (DASO 13, 16Jan62, para 106)
(Resignation)

Cowhig, Edward Dennis	Roman Catholic

ARMY:

FROM CHIEF OF CHAPLAINS OFFICE

EDC

RAD — MEANS — RELEASE FROM ACTIVE DUTY

markings EDC

Brief p. 11

APPENDIX B #2

DISPOSITION FORM

SECURITY CLASSIFICATION

NO. AGPO-SE 201 Cowhig, Edward D. 0 75 056

SUBJECT: Tender of Unqualified Resignation

Chief, ChapC Br-OAD FROM TAG DATE 22 Nov 61 COMMENT NO. 1

Capt Vaughan/gdr /74538

For remark and recommendation.

FOR THE ADJUTANT GENERAL:

ncl
Resig, 7 Nov 61, w/4 Ind
& 1 Incl

R. O. DAVIDSON
Colonel, AGC
Chief, Sep Br, TAGO

DCSPER-OAD FROM: Chaplain, OAD DATE: 24 Nov 61 COMMENT NO. 2

Chief, Sep Br, TAGO Rm 1E 429

Mr Slayton/54554/new

1. Off (does) ~~(does not)~~ meet the prov of par 2 AR 635-120.

2. a. Gr in which serving Captain b. Perm (RA) ~~(AUS)~~ Gr Captain

c. Br of svc Chaplain d. Comp RA

3. Date and source of apt (~~Reg~~ - Other) Apt RA CH 19 Dec 1956

4. a. Tot act svc (RA) ~~(AUS)~~ eff 19 Dec 1956 is 4 yrs 11 mos 5 days.

b. Tot act and inact svc ~~(AUS, USAR, ARNG)~~ eff 16Nov60 is 11 yrs 0 mos 5 days.

5. Recm (appr) ~~(disappr)~~ resign. (If disappr indc in REMRAKS reasons therefor).

6. Recm (appr) (disappr) PERRAD. (If disappr indc in REMARKS reasons therefor).

7. Change of sta orders ~~(revoked)~~ (not appl)

8. Type of disch certif recm Honorable

9. a. OFF departed CONUS 10 Jun 60 . b. OFF depn departed CONUS No Dep

10. Off (~~has~~) (is not) curr undergoing course of instr at svc school. If ans is affirmative please furnish:

a. Course title . b. Svc obligation .

c. Beginning date . d. Ending date .

11. REMARKS: The ecclesiastical indorsing agency concerned will remove Chaplain Cowhig's ecclesiastical indorsement if his resignation is not accepted.

FOR THE CHIEF OF CHAPLAINS:

Incl
n/c

BERNARD J. FENTON
Chaplain (Colonel), USA, Chaplain, OAD

SP FL 188
(Oct 60)

*Delete unless exception to policy is involved.

DD FORM 1 FEB 50 96 REPLACES AGE FORM 96, 1 OCT 48, WHICH MAY BE USED

U.S. GOVERNMENT PRINTING OFFICE